153 U S 192

TRANSCRIPT OF RECORD. 153-192

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 337.

E. G. HANRICK, APPELLANT,

vs.

NICHOLAS HANRICK, ANNIE HANRICK, ET AL.

No. 338.

NICHOLAS HANRICK, ANNIE HANRICK, ET AL., APPELLANTS,

vs.

E. G. HANRICK, E. J. GURLEY, WILLIAM BRADY, ET AL.

No. 339.

WILLIAM BRADY, PHILIP O'BRIEN, ET AL., APPELLANTS,

vs.

E. G. HANRICK, E. J. GURLEY, ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 31, 1890.

(14,396, 14,397, & 14,398.)

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a In the Circuit Court of the United States, Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.* } No. 52. Equity.

Transcript of Record.

J. H. Finks, clerk, by C. A. Richardson, deputy.

1 *Plaintiffs' Original Petition. Filed Dec. 17, '78.*

THE STATE OF TEXAS,
County of Falls.

District Court, March Term, A. D. 1879.

To the dist. court of said county:

Your petitioner-, Nicholas Hanrick, Ellen Hanrick, Annie Hanrick, Elizabeth O'Brien, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, joined by her husband, Martin O'Neil; Peter Whalen and the four minor children of himself and his wife, Mary Whalen, deceased, to wit, Mary Whalen, age 20 years; Rob't Whalen, age 15 years: Bridget Whalen, age 12 years; Eliza Whalen, age ten years, all of whom are hereinafter styled plaintiffs, complaining of Edward G. H*na*rick, Philip O'Brien and his wife, Elizabeth O'Brien, who are hereinafter styled defendants, represents that the pl't'ffs Nicholas and Ellen Hanrick reside in the county of New York, State of New York; that the pl't'ff Annie Hanrick resides in the county of King, State of New York; that the pl't'ff- Eliza O'Brien, Elizabeth Clare, Thos. Clare, Peter Whelan, and the said four above-named minor pl't'ffs reside in the county of Wexford, Ireland, in the United Kingdom of Great Britain and Ireland; that the pl't'ffs Catherine O'Neil and Martin O'Neil reside in the county of Dublin, Ireland, in the United Kingdom of Great Britain and Ireland; that the def't Edward G. Hanrick resides in the county of McLennan, State of Texas, and the def'ts Philip O'Brien and Eliza O'Brien reside in the county of Suffolk, State of Massachusetts.

Pl't'ff- further represents that under and by virtue of the general and public statutory law of the United Kingdom of Great Britain and Ireland all the right of citizens and natural-born subjects both in and to the acquisition, taking, holding, and disposition of real and personal property of any description situated within the said United Kingdom of Great Britain and Ireland is expressly
2 given to and conferred upon aliens; that under and by virtue
of said general and public laws a resident citizen and natural-born subject of the United States of America and of the State of Texas is entitled to all the rights and interest in real estate and personal property of whatever kind situated in said United Kingdom

of Great Britain and Ireland that a citizen of said united kingdom is entitled to in said kingdom.

Pl't'ffs further show that one Edward Hanrick about the year 1865, in the county of Montgomery, State of Alabama, died intestate and without lawful issue, he having never married; that at the time of his death the said Edward Hanrick was seized and possessed of the parcels of land hereinafter described; that there has been no administration on the estate of Edward Hanrick, there being no debts against the said estate.

That the said Hanrick l*fe*t surviving him as his only heirs two brothers, John and James Hanrick; a sister, Elizabeth O'Brien, the wife of Martin O'Brien, deceased, she being one of the pl't'ffs in this suit, and the def't Edward G. Hanrick, the son and only heir of Philip Hanrick, who was a brother of the said Edward Hanrick and who died about the year 1852; that at the death of the said Edward Hanrick intestate and without issue all right, title, and interest the said Edward had in and to real estate situated within the State of Texas by operation of law descended and vested in fee simple in and to the said John and James Hanrick, Elizabeth O'Brien, one of the pl't'ffs herein, and the def't Edward G. Hanrick.

That subsequent to the death of said Edward Hanrick, to wit,
about the year 1871, the said John Hanrick, having never
3 married, died intestate and without lawful issue; that at the
death of the said John Hanrick intestate and without issue, there being no debts against his estate and no administration thereupon, all right, title, and interest the said John Hanrick had in and to real estate situated in the State of Texas descended and vested by operation of law in fee simple in the said James Hanrick, Elizabeth O'Brien, and the defendant Edward G. Hanrick; that at the time of the death of the said John Hanrick he was seized and possessed of an undivided one-fourth interest in value of the tracts or parcels of land hereinafter described.

That subsequent to the death of the said Edward Hanrick and the said John Hanrick, to wit, about the year 1875, the said James Hanrick died intestate; that there were no debts against the estate of the said James Hanrick and no administration thereupon; that at the death of the said James Hanrick intestate he left surviving him as his only heirs the said above four named minor pl't'ffs, the children of his daughter, Mary Whelan, who died about the year 1868, the wife of Peter Whelan, one of the pl't'ffs, and the pl't'ffs Nicholas, Ellen, and Annie Hanrick, Elizabeth Clare, and Catherine O'Neil, the same being his only surviving children at the time of his death; that at the death of the said James Hanrick intestate all right, title, and interest the said James had in and to real estate situated within the State of Texas by operation of law descended and vested in and to the said four minor pl't'ffs and the said pl't'ffs, Nicholas, Ellen, and Annie Hanrick, Elizabeth Clare, and Catherine O'Neil; that the said James Hanrick died seized and possessed of in fee simple *of* an undivided one-third interest in value of the tracts or parcels of land hereinafter described; that said Edward

Hanrick died intestate about the year 1865 seized and possessed
4 in fee simple of the following-described tracts or parcels
of land, situated in the county of Falls, State of Texas:

Tract number one.—A certain tract of land known as the Alanacio de la Serda eleven-league grant, situated in the county of Falls, State of Texas, on the left bank of the Brazos river, at a point where an old channel of the stream enters into the river, which is called old bed of the river, and having metes and bounds as follows, to wit: Beginning at a stake, from whence at fifteen varas distant a — ten inches in diameter bears south 4½′ W., and at twenty-one varas distant another — fifteen inches in diameter bears S. 48½′ W.; thence in a line N. ½′ E. 27,620 vs., crossing a rivulet which is called Isaac's creek, to a stake which is driven in the plain as a cor.; thence in another line S. 72° W. 28,776 vs. to a — upon the margin of the river, from which an elm 12 inches in diameter bears S. 58½′ E. 10 varas distant, and another elm six inches in diameter bears S. 8¾ E. 22 varas; thence with the meanderings of the river downwards to the point of beginning, and comprehending within its bounds one deed of eleven leagues of land, which said tract of land was granted to Mathew R. Williams as attorney for Alanacio de la Serda on the — day of ——, 1833; but pl't'ffs deduct and exclude from this grant all sales and grants made out of the same by the said Edward Hanrick.

Tract number two.—Two certain parcels of land situated in the county of Falls, State of Texas, formerly granted by the proper officers of the State of Coahuila and Texas to Pedro Zarza, by his attorney-in-fact, Robert M. Williamson, and described and bounded as follows, the first of said tracts containing four leagues of land,
5 more or less, adjoining the survey of Ignacio Golinda: Beginning
at the lower corner of said survey, on the right bank of the Brazos river, thence S. 62′ W., following the lower line of said survey, 19,330 varas, to the second corner of this tract; thence south 28′ E. 5,000 varas to the third corner; thence north 62′ E. 21,730 varas to the Brazos river for the fourth corner; thence up the river, with its meanderings, to the place of begin-ing, the second of said tracts containing one league of land and beginning at the west or northwest corner of the survey of two leagues of Juan Acosta; thence S. 62′ W. 10,000 varas; thence S. 28′ E. 5,000 —; thence north 62′ E. 10,000 varas; thence N. 58′ W. to the place of beginning.

Tract number three.—A certain tract of land lying and being in the county of Falls and State of Texas and known and described as a part of the eleven-league tract granted to Rafael De Aguirrie, situated on a branch of Cow bayou, beginning at the S. W. corner of the two leagues of land granted to Juan Jose Acosta, which is a stake in the upper boundary of four leagues granted to Jose Antonio Manchacha, from which a cedar 5 inches in diameter bears N. 47′ E. 14 varas distant, and an elm 6 inches in diameter bears S. 32 W. 9 varas distant; thence running S. 62 W. 10,000 varas to a stake planted in the said boundary for the second corner; thence N. 28′ W. 2,500 varas to the southwest corner of a league of land granted to Pedro Zarza; thence N. 62′ E. with the southeast boundary 10,000

varas to the southeast corner in southwest boundary of the land of Acosta; thence 28′ east to the place of beginning, including one league of land, more or less, according to the original survey thereof; that on the — day of ——, 18—, pl't'ffs were, by virtue and in consequence of the facts above set forth & alleged, seized and possessed of in fee simple an undivided two-thirds interest in value
6 in and to the above-described tracts or parcels of land, situated in said county of Falls, State of Texas; that on the day and year last aforesaid the def't Edward G. Hanrick entered upon said premises and ejected pl't'ff- therefrom and has ever since and does now hold and keep possession thereof and unlawfully withholds from the pl't'ff- the possessions thereof, to pl't'ffs' damage one hundred thousand dollars; that the rents and profits of said above-described parcels of land *is* of the reasonable value of ten thousand dollars per year; that the def't Edward G. Hanrick has converted said rents and profits to his own use, to pl't'ffs' further damage fifty thousand dollars.

Petitioners further aver and charge that the def't Philip O'Brien and his wife, Elizabeth O'Brien, fraudul*a*ntly pretend to have an interest in and to the above-described parcels of land, for which reasons they are herewith made parties to this suit; that they have not now and never had any interest in and to said parcels of land.

The premises considered, the pl't'ffs pray that the def't- be cited, as the law directs, to answer this petition; that on final trial they have judgement against def'ts and recover of said def'ts an undivided two-thirds interest in value of said above-described tracts of land; that commissioners be appointed to partition and divide said parcels of land between these pl't'ffs and the def't Edward G. Hanrick; that pl't'ffs recover of the def't Edward G. Hanrick damages, the reasonable rents and profits of said lands and costs of suits, and all other relief, both general and special, that to the court may seem right and proper.

BELCHER AND RING,
Att'ys for Plaintiffs.

7 Endorsement: No. 1728. Nicholas Hanrick *et al. vs.* Edward G. Hanrick. This action is brought as well to try title as for damages. Belcher and Ring, att'ys for pl't'ffs. Original petition. Filed Dec. 17, '78. J. Scruggs, clerk D. C., F. C.

8 *Original Answer of E. G. Hanrick.*

NICHOLAS HANRICK *et al.*
vs.
EDWARD G. HANRICK *et al.*
} Pending in the Dist. Court of Falls County.

Comes the def't Edward G. Hanrick, by his att'y, and, excepting to pl't'fs' petition herein filed, says that pl't'ffs ought not to have or further to maintain *his* action, because it appears from said petition that some of the joint pl't'ffs, viz., Mary Whelan, R'b't Whelan, Bridget Whelan, and Eliza Whelan, are laboring under the disability of minority and cannot therefore bring this suit, and of this def't prays judgement that this suit abate.

E. J. GURLEY AND
GOODRICH AND CLARKSON, } *Att'ys.*

And, further excepting to said petition, this def't says that it does not appear therefrom that at the date of the death of Edward Hanrick, on the — day of ——, A. D. 1865, *are* alien to the *limited* States and the State of Texas and subjects of the Queen of Great Britain and Ireland could by the laws of Texas then in force inherit real estate in the State of Texas, or that a citizen of the United States, being a descendent of such alien, could so inherit; of this def't prays judgement.

And, further excepting to said petition, def't shows that it appears therefrom that more than nine years have elapsed from the time descent was cast by the death of Edward Hanrick until the institution of this suit, and therefore the pl't'ffs are barred and cannot recover, and of this def't prays judgement.

9 And, further excepting to pl't'ffs' petition, this def't says that the same shows no right in the pl't'ff-, and of this def't prays judgement if he ought to answer further.

E. J. GURLEY AND
GOODRICH AND CLARKSON, } *Att'ys.*

And, answering pl't'ffs' petition, this def't comes and defends the wrongs, injuries, and trespasses therein alleged against him and says he is not guilty in manner and form as therein charged.

And, further answering said petition, this def't denies all and singularly the allegations thereing contained and demands proof.

E. J. GURLEY AND
GOODRICH & CLARKSON, } *Att'ys.*

And for special plea in bar of pl't'ffs' action this def't says that if the pl't'ffs or any one of them ever had right of entry or claim as to the lands mentioned in said petition they are now barred by lapse of time ,in that, being aliens, they have been nine years from the date of descent cast to make entry or claim; wherefore this def't says they are barred by the statute, and that the said claim is a stale demand, and this he is ready to verify.

And for further special plea and bar of pl't'ffs' action this def't denies that upon the death of Edward Hanrick, on the — day of ——, 1865, his estate or any part thereof or any part of the lands described in pl't'ffs' petition descended to and vested by operation of law in the said John Hanrick, James Hanrick, and Elizabeth O'Brien, or any one of them, for it is alleged that at said date and long anterior thereto said John Hanrick, James Hanrick, and Elizabeth O'Brien were aliens to the State of Texas and subjects of the Queen of England, Great Britain and Ireland, and that they continued such
aliens as follows, viz: John Hanrick until his death in 1871,
10 James Hanrick until his death in 1875, and the said Eliza-
beth O'Brien until the present time.

And it is further and specially denied that by the general and public statutory law or by any other law of the United Kingdom of Great Britain and Ireland existing or in force on the said — day of ——, A. D. 1865 (being the date of the death of Edward Hanrick), all the rights of citizens and native-born subjects both in and to the acquisition, taking, holding, and disposition of real and personal property situated within the said United Kingdom was expressly given or conferred upon aliens, and it is specially denied that by virtue of such general and public laws or by any other law in force or existing at the date last aforesaid a resident citizen and native-born subject of the United States or of the State of Texas was entitled to all of the rights and interest in real estate and personal property situated in said United Kingdom that a subject of said kingdom was; but this def't avers that the law existing and in force at said date in said United Kingdom upon the subject of the rights of aliens to real and personal property in said kingdom was exactly and directly the reverse; that the law then was that an alien could not inherit property in said kingdom, and this def't avers that in consequence of the said alienage of the pl't'ff Elizabeth O'Brein and in consequence of the alienage of the said John Hanrick and James Hanrick, through whom pl't'ff claims, none of them did inherit any part of the estate of Edward Hanrick, deceased, nor can their descendants so inherit; and, further, this def't avers that he is the sole and only heir-at-law of said Edward Hanrick, deceased, and as such is entitled to and claims the entire estate of said deceased, for this, that he is a nephew of said deceased, a native-born citizen of the United States and a citizen of this State; 11 that his father, Philip Hanrick, died long anterior to the date of the death of Edward Hanrick, who was a brother of def't's father, and that upon the death of said Edward Hanrick this def't was the only person qualified by blood and citizenship to inherit from him; all of which he is ready to verify.

E. J. GURLEY,
GOODRICH AND CLARKSON,
Attorneys for E. G. Hanrick.

Endorsement: No. —. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Answer of E. G. Hanrick. Filed Feb. 21st, 1879. J. Scruggs, D. C. F. C. H. Curry, dep'y.

12 NICHOLAS HANRICK *et al.*
vs. } 1728.
EDWARD G. HANRICK *et al.*

This day coming on to be heard the motion of plaintiffs to set aside the judgment rendered at this term of the court, Feb. 28th, 1879, in this cause, appeared both parties, plaintiffs and defendants, Edward G. Hanrick, by attorneys, and, said motion having been considered by the court, the same is sustained, and it is adjudged by the court that said judgment so entered on February 28th, 1879, be, and the same is hereby, set aside, and it is adjudged that judgment be now rendered, showing that before judgment herein plaintiffs discontinue as to defendants Philip O'Brien and Elizabeth O'Brien.

I hereby certify that the above is a correct copy of the case No. 1728, styled Nicholas Hanrick *et al. vs.* Edward G. Hanrick *et als.*, as now appears at my office, *in my office*, at Marlin.

Witness my hand and seal of office this the 10th day of June, A. D. 1887.

[SEAL.] C. H. BARTLETT,
C. D. C., F. C., Tex.,
By J. W. BARTLETT, *Deputy*.

13 *Plaintiffs' 3rd Amended Original Petition. Filed March* 8, 1882.

In District Court, Falls County, Texas, Spring Term, 1882.

NICHOLAS HANRICK *et al.*
vs.
EDWARD G. HANRICK *et al.*

To the hon. judge of said court:

And now comes pl't'ff- hereinafter named in the above-entitled cause, and with leave of the court first had and obtained and dismissing as to their copl't'ff, the said Eliza O'Brien, of Wexford county, Ireland, who was improperly joined with them in their former petitions, withdraw their second amended original petition filed in this cause on the — day of ——, A. D. 1879, and substitute this their amended original petition in lieu of the second, and say:

Your petitioners, Nicholas, Annie, and Ellen Hanrick and Elizabeth Clare, joined by her husband, Thomas Clare, and Catherine O'Neil, joined by her husband, Martin O'Neil, and Mary Whelan and Peter Whelan, who sues for himself as the next friend of his three minor children, to wit, Bridget, Robert, and Eliza Whelan, said minors being represented herein by their guardian *ad litem*, J. A. Martin, Esq., all of whom are hereinafter styled pl't'ffs, complaining of Edward G. Hanrick, William Brady, and Eliza M. O'Brien and her husband, Philip O'Brien; Ed. J. Gurley and John B. Sargent, A. T. Fairly, Ike Casey, Wilson Hammers, and S. B. Bryan, who are hereinafter styled def'ts, would respectfully represent and show to the court that the said Nicholas Hanrick and Ellen Hanrick reside in the county of New York, State of New York, and the said Annie Hanrick resides in the county of Kings, of the said State; that the said Catherine O'Neil and Martin O'Neil reside in the county of Dublin, Ireland, in the United Kingdom of Great Britain 14 and Ireland, and the said Thomas Clare and Elizabeth Clare and Peter Whelan and Mary Whelan, Robert Whelan, and Eliza Whelan and Bridget Whelan reside in the county of Wexford, of said kingdom, and that the said def't, Ed. G. Hanrick, and the said William Brady, Elizabeth M. O'Brien and her husband, Philip O'Brien, reside in the county of New York, State of New York.

That heretofore, to wit, on the — day of ——, A. D. 1865, one Edward Hanrick died intestate in the city of Montgomery, State of Alabama, seized of the lands hereinafter described; that he left surviving him as his next of kin and only heirs two brothers named respectively John and James Hanrick and one sister named Elizabeth O'Brien, the widow of Martin O'Brien, and one nephew by a deceased brother, to wit, the def't Edward G. Hanrick.

That the said John Hanrick died intestate and without issue of body, he never having married, on the — day of ——, A. D. 1871, in the county of Wexford, Ireland, he ever having been a subject of the United Kingdom of Great Britain and Ireland, he being at the time of his death still seized of the interest in the lands hereinbefore referred to, which he inherited from his deceased brother, the said Edward Hanrick; that the said James Hanrick died intestate on the — day of ——, A. D. 1875, in the county of Wexford, Ireland, he also ever having been a subject of the said kingdom, and also being at the time of his death still seized of the interest in said lands inherited by him from said Edward Hanrick, deceased, and also of the interest of the same inherited by him from the said John Hanrick.

That the said James Hanrick left surviving him as his next of kin and sole and only heirs five children, to wit, the said plaintiffs, Nicholas, Annie, and Ellen Hanrick, Elizabeth Clare, and
Catherine O'Neil, and four grandchildren, to wit, the said
15 Mary, Bridget, Robert, and Eliza Whelan, they being the
children of his deceased daughter, Mary, who married the
said pl't'ff, Peter Whelan.

That the said Nicholas Hanrick is and was at the time of the death of the said Edward Hanrick, to wit, on the — day of ——, A. D. 1865, a naturalized citizen of the United States.

That the said Eliza O'Brien is now and ever hath been a subject of the said United Kingdom.

That all the said pl't'ffs, with the exception of the said Nicholas Hanrick, are now and ever have been subjects of the United Kingdom.

That the said Edward Hanrick, deceased, died seized and possessed of in fee simple the following-described tracts of land, the same lying and being situated in said county of Falls, to wit:

Tract number one, containing eleven leagues of land, more or less, and known as the Antanacio de la Serda eleven-league grant.

Tract number two, containing twenty-one thousand acres of land, more or less, and known as the Pedro Zarza grant.

Tract number three, containing forty-four hundred acres of land, more or less, and known as a part of the Rafael D'Aguirrie eleven-league grant, said tracts of land being more particularly described in Exhibit "A," hereto attached.

That said tracts of land are reasonably worth the sum of $200,000.00.

That administration upon the estate of said Edward Hanrick was long since closed; that the lands hereinbefore mentioned are still a part of his estate, the same never having been partitioned among his heirs.

16 That under and by virtue of the general public statutory laws of the United Kingdom of Great Britain and Ireland all the rights of the citizens and natural-born subjects of said kingdom both in and to the acquisition, taking, holding, and disposition of real and personal property of every description situated in said kingdom are expressly given to and conferred upon alien-, and by virtue of said laws a citizen of the United States of America is entitled to all the rights and interests in and to real and personal property of every description situated in said kingdom that a citizen of said kingdom is entitled to, & a title to real and personal property of every description situated in said kingdom may be derived through, from, or in succession to a citizen of the United States in the same manner in all respects as through, from, or in succession to a citizen of said kingdom.

That on the — day of ——. 1878, the said Eliza O'Brien, of Wexford county, Ireland, was, by virtue of the facts hereinbefore set forth, seized of an undivided one-third interest in & to all the tracts of land hereinbefore named; that on said day last named she conveyed all her right, title, and interest in and to the same to the said def't, Eliza M. O'Brien, of the State of New York; that afterwards, on the — day of ——, A. D. 1878, the said Eliza M. O'Brien, being seized, by virtue of the facts hereinbefore set forth, of an undivided one-third interest in said three tracts of land hereinbefore named, did, on said day, joined by her husband, the said Philip O'Brien, convey to the said William Brady an undivided one-half of her undivided one-third interest in and to said lands, thereby vesting in said Brady an undivided one-sixth interest in and to all said lands.

17 That on the — day of —— the said Eliza M. O'Brien and the said William Brady were, by virtue of the facts hereinbefore stated, seized of and in possession of an undivided one-third interest in and to all said tracts of land.

That on said day last aforesaid the said pl't'ffs were, by virtue of the facts hereinbefore stated, also seized and possessed of an undivided one-third interest in and to said tracts of land, and also on the day last aforesaid the said Ed. G. Hanrick was seized and possessed with an undivided one-third interest in the same.

That afterwards, to wit, on the — day of ——, the said def't, Edward G. Hanrick, E. J. Gurley, A. T. Fairy, Ike Casey, S. B. Bryan, and Wilson Hammers unlawfully entered upon and dispossessed pl't'ffs of their interests in said tracts of land and forcibly ejected pl't'ffs therefrom, and denied and still den*ies* pl't'ffs' right to the enjoyment of the same or any portion thereof, and withhold*s* and has withheld from pl't'ffs' possession thereof or of any part thereof, to the pl't'ffs' damage $100,000.

That the rents and profits of said tract of land so unlawfully withheld from pl't'ffs are of the reasonable value of $20,000 per annum, and that the def't Ed. G. Hanrick has been in the exclusive enjoyment of the same for more than two years anterior to the institution of this suit down to the present time.

That the said def't, Ed. G. Hanrick, has cut off from said lands sold and disposed of since the 1st day of June, A. D. 1880, 30,000 cedar trees of the value of $20,000; 500,000 ash, post-oak, and other valuable trees of the value of $20,000, within the past three years.

The premises next above considered, pl't'ffs pray that the
18 def'ts be cited as the law directs to answer this petition, and
that on final hearing they have judgement against the def'ts decreeing and vesting in your petitioners an undivided one-third interest in said tracts of land described in Exhibit A, and that a writ of possession issue for same, and that commissioners be appointed to partition said lands and pl't'ffs recover of the def'ts their *pro rata* share of the rents and profits of said lands and recover of the said Ed. G. Hanrick damages for the said destruction of timber in the sum of $15,000, that being pl't'ffs' *pro rata* share of same, and for costs of suit and all other relief, both general and special.

And pl't'ffs, further complaining of the said Sargent and Branch, would respectfully represent that the said John and James Hanrick and the said Eliza O'Brien did, on this — day of ——, A. D. 1870, execute and deliver to the said Philip O'Brien a power of att'y authorizing the said Philip to sell and convey their interest in the tracts of land hereinbefore described, and also all other tracts of said land to which they were entitled by virtue of their relationship to the said deceased Edward; that the said Philip did by virtue of said power attempt to convey on the — day of Feb., A. D. 1878, to the said Sargent an undivided one-half interest in said lands and to the said Branch an undivided one-fourth interest in the same; that said power of att'y was not coupled with an interest, and that though said conveyances under the same were void on account of the fact that John and James Hanrick were dead at the time of the execution of the same, yet the pl't'ffs say that the said Sargent and Branch claim a distributive share in said estate, and that their claim casts a cloud upon the title of the pl't'ffs; whereupon they pray
that they be made parties to this suit and that pl't'ffs have
19 judgement against them removing said cloud and canceling
said conveyances and for costs and all other relief, both general and special.

And the said pl't'ffs, Annie, Ellen, and Nicholas Hanrick, complaining specially of the said def'ts, Eliza M. O'Brien and her husband, Philip, and the said William Brady, would respectfully represent unto your honor that heretofore, to wit, on the 21st day *od* August 1877, the said Nicholas Hanrick, and on the 3rd day of April, 1878, the said Annie, otherwise Honora, Hanrick were severally seized, as aforesaid, of their said undivided interest in said land described in said Exhibit A, which they inherited from and under the said Edward Hanrick, deceased, and were also seized of a similar undivided interest, inherited in the same manner, in the following-named tracts of land, to wit, a tract containing 44,280 acres, granted to Raphael Aguirrie, the same being situated in Williamson county, Texas; also a tract of land containing 48,718 acres,

granted to Miguel Divilla, the same being situated in Williamson, Bell, and Milam counties, Texas; also a tract of land containing 4,428 acres, granted to one J. F. De Raumazas, and in a tract containing 2,214 acres, granted to Andrew Weaver, said last two tracts being situated in Liberty county, Texas, of all of which said tracts of land the said Edward Handrick, deceased, died seized in fee simple, and in which the said Annie, Ellen, and Nicholas Ha-rick, by virtue of facts hereinbefore shown, were each seized of the same undivided interest inherited by them in the lands described in said Exhibit A, to wit, each being seized of an undivided one-eighteenth interest; that on said days last aforesaid the said Eliza M. O'Brien, through her husband and agent, the said Philip O'Brien, induced
the said Annie, Ellen, and Nicholas Hanrick, the latter being
20 joined by his wife, Kate, to convey to her, the said Eliza M.
O'Brien, for the trust purposes hereinafter stated, all their right, title, and interest in and to the lands described in said Exhibit A and in and to said tracts of land lying in other counties in the State of Texas by certain deeds of conveyance, copies of which in substance are hereto attached and marked respectively Exhibit-K and S and M and made a part of this petition, which said original instruments the said O'Brien and wife and the said William Brady are hereby notified to produce on the trial of this cause or secondary evidence of the same will then be offered.

That, though each of the said conveyances purports to be in consideration of one dollar paid to each of the said grantors, in truth and fact no consideration passed between said grantors and said grantees, nor was any consideration or thing of any value whatsoever ever given or promised said grantees in payment of said conveyance, but the said Eliza O'Brien, through her husband and agent, the said Philip, represented to said grantors that their interests in the lands hereinbefore described could not be recovered, and that their claim in and to the same could not be successfully asserted against the said Edward G. Hanrick and others claiming the same unless they first transferred their interest therein to a native-born citizen of the United States; that since they were foreign born they could not under the laws of Texas maintain suits in the courts of Texas for the recovery of their said interest in said land, and that it would, therefore, be advisable for them to transfer their interest by apparently absolute deeds to a native-born citizen of the United States, so that suits could be brought for their benefit
in the name of such citizen; that the said Nicholas, Annie,
21 and Ellen Hanrick, believing said representations to be true,
were induced by the same to and accordingly did execute and deliver said conveyances for the sole and only purpose of enabling said suit to be brought in the name of a natural-born citizen, which they would not have done but for said representation, and the said Eliza M. O'Brien, joined by her husband, the said Philip, did at the time of the execution of the said deed expressly promise the said Nicholas, Annie, and Ellen Hanrick that she would reconvey to them their said interests thus conveyed to her whenever requested so to do or as soon as their rights in and to said lands

enjoyment of the same for more than two years anterior to the institution of this suit down to the present time.

That the said def't, Ed. G. Hanrick, has cut off from said lands sold and disposed of since the 1st day of June, A. D. 1880, 30,000 cedar trees of the value of $20,000; 500,000 ash, post-oak, and other valuable trees of the value of $20,000, within the past three years.

18 The premises next above considered, pl't'ffs pray that the def'ts be cited as the law directs to answer this petition, and that on final hearing they have judgement against the def'ts decreeing and vesting in your petitioners an undivided one-third interest in said tracts of land described in Exhibit A, and that a writ of possession issue for same, and that commissioners be appointed to partition said lands and pl't'ffs recover of the def'ts their *pro rata* share of the rents and profits of said lands and recover of the said Ed. G. Hanrick damages for the said destruction of timber in the sum of $15,000, that being pl't'ffs' *pro rata* share of same, and for costs of suit and all other relief, both general and special.

And pl't'ffs, further complaining of the said Sargent and Branch, would respectfully represent that the said John and James Hanrick and the said Eliza O'Brien did, on this — day of ——, A. D. 1870, execute and deliver to the said Philip O'Brien a power of att'y authorizing the said Philip to sell and convey their interest in the tracts of land hereinbefore described, and also all other tracts of said land to which they were entitled by virtue of their relationship to the said deceased Edward; that the said Philip did by virtue of said power attempt to convey on the — day of Feb., A. D. 1878, to the said Sargent an undivided one-half interest in said lands and to the said Branch an undivided one-fourth interest in the same; that said power of att'y was not coupled with an interest, and that though said conveyances under the same were void on account of the fact that John and James Hanrick were dead at the time of the execution of the same, yet the pl't'ffs say that the said Sargent and Branch claim a distributive share in said estate, and that their claim casts a cloud upon the title of the pl't'ffs; whereupon they pray that they be made parties to this suit and that pl't'ffs have 19 judgement against them removing said cloud and canceling said conveyances and for costs and all other relief, both general and special.

And the said pl't'ffs, Annie, Ellen, and Nicholas Hanrick, complaining specially of the said def'ts, Eliza M. O'Brien and her husband, Philip, and the said William Brady, would respectfully represent unto your honor that heretofore, to wit, on the 21st day *od* August 1877, the said Nicholas Hanrick, and on the 3rd day of April, 1878, the said Annie, otherwise Honora, Hanrick were severally seized, as aforesaid, of their said undivided interest in said land described in said Exhibit A, which they inherited from and under the said Edward Hanrick, deceased, and were also seized of a similar undivided interest, inherited in the same manner, in the following-named tracts of land, to wit, a tract containing 44,280 acres, granted to Raphael Aguirrie, the same being situated in Williamson county, Texas; also a tract of land containing 48,718 acres, granted to Miguel Divilla, the same being situated in Williamson, Bell, and Milam counties, Texas; also a tract of land containing 4,428 acres, granted to one J. F. De Raumazas, and in a tract containing 2,214 acres, granted to Andrew Weaver, said last two tracts being situated in Liberty county, Texas, of all of which said tracts of land the said Edward Handrick, deceased, died seized in fee simple, and in which the said Annie, Ellen, and Nicholas Hanrick, by virtue of facts hereinbefore shown, were each seized of the same undivided interest inherited by them in the lands described in said Exhibit A, to wit, each being seized of an undivided one-eighteenth interest; that on said days last aforesaid the said Eliza M. O'Brien, through her husband and agent, the said Philip O'Brien, induced the said Annie, Ellen, and Nicholas Hanrick, the latter being 20 joined by his wife, Kate, to convey to her, the said Eliza M. O'Brien, for the trust purposes hereinafter stated, all their right, title, and interest in and to the lands described in said Exhibit A and in and to said tracts of land lying in other counties in the State of Texas by certain deeds of conveyance, copies of which in substance are hereto attached and marked respectively Exhibit-K and S and M and made a part of this petition, which said original instruments the said O'Brien and wife and the said William Brady are hereby notified to produce on the trial of this cause or secondary evidence of the same will then be offered.

That, though each of the said conveyances purports to be in consideration of one dollar paid to each of the said grantors, in truth and fact no consideration passed between said grantors and said grantees, nor was any consideration or thing of any value whatsoever ever given or promised said grantees in payment of said conveyance, but the said Eliza O'Brien, through her husband and agent, the said Philip, represented to said grantors that their interests in the lands hereinbefore described could not be recovered, and that their claim in and to the same could not be successfully asserted against the said Edward G. Hanrick and others claiming the same unless they first transferred their interest therein to a native-born citizen of the United States; that since they were foreign born they could not under the laws of Texas maintain suits in the courts of Texas for the recovery of their said interest in said land, and that it would, therefore, be advisable for them to transfer their interest by apparently absolute deeds to a native-born citizen of the United States, so that suits could be brought for their benefit in the name of such citizen; that the said Nicholas, Annie, 21 and Ellen Hanrick, believing said representations to be true, were induced by the same to and accordingly did execute and deliver said conveyances for the sole and only purpose of enabling said suit to be brought in the name of a natural-born citizen, which they would not have done but for said representation, and the said Eliza M. O'Brien, joined by her husband, the said Philip, did at the time of the execution of the said deed expressly promise the said Nicholas, Annie, and Ellen Hanrick that she would reconvey to them their said interests thus conveyed to her whenever requested so to do or as soon as their rights in and to said lands

should be established, without charge or expense to them, and the said Eliza M. O'Brien and her said *her* husband did also expressly promise immediately on the execution of the said conveyances to institute a vigorous prosecution for the recovery of their said rights, they then and there representing to the said Annie, Ellen, and Nicholas Hanrick that they had ample means for the prosecution of said suits, and that, relying on said promise, they executed said instrument, which they would not have done but for the same; that after the execution of said deed the said Annie, Ellen, and Nicholas ascertained that said conveyances were entirely unnecessary, and that the said Philip and Eliza M. O'Brien had either intentionally or through ignorance *had* deceived them by said representations that suits could not be instituted and successfully prosecuted in their name; that after ascertaining said facts the said Annie, Ellen, and Nicholas requested the said Eliza M. O'Brien and the said Philip O'Brien to reconvey to them the legal title in and to their said interest in said lands which they had as aforesaid conveyed to the said Eliza; that they did on the — day of ——, A. D. 1878, execute and deliver to S. Zuckerman, of Wood county, Texas, a certain
22 bond wherein they agreed, upon the compliance with certain conditions therein named, to convey to him one-half of their said undivided interest, and that immediately thereafter they informed the said O'Brien- of the execution of the same and requested them to reconvey to them said property, which the said O'Brien wholely refused to do, and on one occasion when so requested the said Philip O'Brien then and there plainly told the said Nicholas that he had his, Nicholas', interest, and that he intended to keep it.

That at the time said conveyances were executed by the said Ellen and Annie the said Eliza M. and Philip signed and delivered to each the said Annie and Ellen a memorandum in writing wherein it was stated that each of said transfers were made for trust purposes only, and wherein she, the said Eliza, promised to reconvey to the said Annie and Ellen their said interests in said lands as soon as the same should be recovered without cost to them beyond their *pro rata* share of the expenses incurred in recovering the same; that shortly after the said Ellen lost said memorandum, and that, tho' the said Eliza M. O'Brien and the said Philip were notified of said loss and repeatedly requested to execute and deliver to her, the said Ellen, a similar memorandum to the one lost, she has ever failed and refuses so to do; that shortly after the said Nicholas Hanrick executed said conveyance he, becoming alarmed lest the said O'Brien should seek to deprive him of his right in said land, requested them, through his agent, the said Clark, to give him some memorandum in writing showing the object and nature of said transfer, which he had once promised to do, but that, tho' often requested, they have ever refused so to do.

23 That on the — day of November, 1878, the said Eliza M. O'Brien joined by her husband, Philip, after having been requested as aforesaid to reconvey to said Annie, Ellen, and Nicholas their legal title in and to their interest in said land, and after being

informed of their repudiation of said conveyances by the execution of said bond in favor of the said Zucherman, did, nevertheless, convey to the said Brady an undivided one-half of the interest conveyed to them by the said Ellen and Annie, said conveyances, however, being without consideration and with full knowledge on the part of the said Brady that said conveyances to the said Eliza M. O'Brien were for said trust purposes and without good or valuable consideration, and that the equitable title in and to their said interest was and ever had been in the said Annie and Ellen; and the said Annie, Ellen, and Nicholas further alleged that neither the said Eliza M. O'Brien or her said husband took any steps for the purpose of bringing suit for them in the name of the said Eliza M. O'Brien for the recovery of their said interest, nor have they in any manner attempted to carry out said trust; that their said representation that they had ample means to pay the expenses of said suit were wholly false. Wherefore the said Nicholas, Annie, and Ellen say that the said Eliza M. O'Brien has shown herself and her said husband to be entirely unsuitable and unfit for the execution of the trust intended, as well as the fact that said trust was executed originally by mistake, and that the interest- of the def't- are seriously jeopardized by said conveyances, and that the same were and are still entirely unnecessary. The premises next above considered, the said Annie, Ellen, and Nicholas Hanrick pray that the said Eliza M. O'Brien and Philip O'Brien and William Brady be cited, as the law directs, to answer this portion of this petition, and that 24 on final hearing the court render judgment cancelling said deeds and reinvesting in the said Annie, Ellen, and Nicholas Hanrick their legal as well as equitable title in and to their said interest in said lands, and for all other relief, both general and special, which the court may deem meet and proper, *and* etc.

BELCHER AND RING,
J. D. OLTORF, W. A. MARTIN,
Att'y- for Pl't'ff-.

EXHIBIT "A."

Description of the Three Tracts of Land Referred to Heretofore in Petition.

1. Tract number one.—The same containing eleven leagues of land originally granted to Antanacio de La Serda, being situated in the county of Falls, State of Texas, on the left bank of the Brazos river, at and near the entrance therein of an old bed of the river, and bounded and described as follows, to wit: Beginning at a stake on the bank of said river near the old bed aforesaid, from which a sycamore ten inches in diameter bears south 47 west 15 varas distant, and another 15 inches — diameter bears south 84½ west 21 varas, thence running north 62 east 27,626 varas to a stake in prairie; thence N. 28 W. 10,000 varas to stake in prairie; thence running S. 62 W. 28,976 varas to stake on bank of said river, from which a poplar 12 inches — bears S. 58 E. ten varas, and another six inch- —

diameter bears S. 8¾ E. 22 varas; thence following the meanders of said river to the place of beginning.

Tract number two.—The same being in two bodies of land situated in Falls county, State of Texas, formerly granted by the proper officers of the State of Coahuila and Texas to Pedro Zarza,
25 by his att'y-in-fact, Robert M. Williams, and described and
bounded as follows: The first of said bodies of land, containing four leagues, more or less, adjoining the survey of Ignacio Golinda, beginning at the lower corner of said survey, on the right bank of the Brazos river, thence S. 62 W., following the lower line of said survey, 19,330 varas to the second corner of this tract; thence S. 28° E. 5,000 varas to the third corner; thence N. 62 E. 21,730 varas to the Brazos river for the north corner; thence up the river with its meanders to the place of beginning. The other body of land, containing one league, beginning at the west or northwest corner of the survey of two leagues of Juan Jose Acosta, thence S. 62 W. 10,000 varas, thence S. 28 E. 5,000 varas; thence north 62 E. 10,000 varas; thence N. 28 W. to the place of beginning.

Tract number three.—A tract of land containing one league, more or less, the same being a portion of 11 leagues of land granted to Rafael D'Aguirre, being situated in Falls county, Texas, on a branch of Cow bayou, beginning at the S. W. corner of two leagues of land granted to Juan Jose Acosta, which is a stake in the upper boundary of four leagues granted to Jose Antonio Manchaca, from which a cedar 5 inches in diameter bears N. 47 E. 14 varas distant, and an elm 6 inches in dia. bears S. 32 W. 9 varas distant; thence running S. 62 W. 10,000 varas to stake in side of boundary for the second corner; thence N. 28 W. 2,500 varas to the S. W. corner of a league of land granted to Pedro Zarza; thence N. 62 E. with the southeast boundary 10,000 varas to the S. E. corner in the S. W. boundary of the land of Acosta; thence S. 28 E. to the beginning, said tract being delineated on said map marked Exhibit 2.

EXHIBIT M.

This indenture made the 21st day of Aug. in the year one thousand eight hundred and seventy-seven between Nicholas
26 Hanrick of the city county and State of New York, butcher,
son of James Hanrick of Tomannie, Ireland, brother of Edward Hanrick, and Kate Hanrick his wife of the same place, parties of the first part to Eliza Mercy O'Brien the wife of Philip O'Brien, of the city of New York and State of New York, part*ies* of the second part, witnesseth that the said parties of the first part for and in consideration of the sum of one dollar lawful money of the United States to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents the rece*pit* whereof is hereby acknowledged and the said party of the second part her heirs executors and administrators, forever, release- and discharge- from the same by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed and by these presents do grant, bargain, alien, remise,

release, convey and confirm unto the said party of the second part and to her heirs and assigns forever all the right title and interest of the party of the first part of, in and to each and all of the following tracts of land which belong to Edward Hanrick of Montgomery county State of Alabama United States of America deceased eighteen and sixty-five A. D. in which he had or claimed to have a right, title or interest, all situated lying and being in the State of Texas in the United States of America, namely. First a tract of forty-four thousand two hundred and eighty (44,280) acres in Williamson county. Second. A tract of forty-four hundred and twenty-eight (4,428) acres in Falls county which two tracts of land were granted to one Rapheal Aguirrie. Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county
27 which tract of land was granted to one Pedro Zarza. Fourth.
A tract of forty-eight thousand seven hundred and eight (48,708) acres in Falls county, which tract of land was granted to one Miguel Davilla. Fifth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Bell county which tract of land was granted to one Miguel Divilla. Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county which tract of land was granted to one J. T. De Rumazan. Seventh. A tract of twenty-two hundred and fourteen (2,214) acres in Liberty county which tract of land was granted to one Andrew Weaver, and also any and all other lands in said State of Texas which belong- to the said Edward Hanrick at the time of his decease, or in which he had any right or title or interest, the same having descended to, and the title thereof bec*a*me vested in the said party of the first part. Upon the decease of the said Edward Hanrick, the party of the first part being his sister and one of his heirs-at-law together with all and singular the tenements, her*i*ditaments, and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate right, title, interest and property, possession claim, demand whatsoever as well in law as in equity, of the said party of the first part of in and to the same and every part and parcel thereof with the appurtenances, to have and to hold the above granted, bargained and sold and described premises with the appurtenances to the said party of the second part, her heirs and assigns, to their own proper use benefit and behoof forever, and the said Nicholas Hanrick and Kate his wife at the time of the sealing and delivery of these presents are lawfully seized in, of a good
28 absolute and indefeas*a*ble estate of inheritance in fee simple
of and in all and singular the above granted and described premises, with the appurtenances, and have good right full power and lawful authority to grant bargain sell and convey the same in manner aforesaid, and that the said party of the second part, her heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use occupy and enjoy the above-granted premises and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance

of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the same now are free, clear and discharged and unincumbered of and from, all former and other grants, titles, charges, estates, judgments, taxes assessments and incumbrances of what nature or kind whatsoever, and also that the said parties of the first part and their heirs and all and every person or persons whomsoever lawfully or equitably deriving any estate, right or title or interest of in and to the hereinafter-granted premises by law, from, under or in trust for them, shall and will, at any time or times hereafter upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, her heirs and assigns, make do and execute, or cause to be made done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part her heirs and assigns forever as by the said party of the second part
29 her heirs assigns, or other counsel learned in the law, shall be reasonably advised or required. And the said Nicholas Hanrick and Kate his wife for their heirs the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part, her heirs and assigns, against the said parties of the first part & their heirs and assigns and against all and every person or persons whosoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

NICHOLAS HANRICK. [SEAL.]
KATE HANRICK. [SEAL.]

Sealed and delivered in the presence of—
ALEX. F. BLUM.
ALEX. O. STREANK.

STATE OF NEW YORK,
City of New York and County of New York. }

On the twenty-first day of August, in the year of one thousand eight hundred and seventy-seven, before me, Alex. O'Strander, a commissioner for Texas in New York, personally came Nicholas Hanrick and Kate Hanrick, his wife, to me known to be the same persons described in and who executed the within instrument, bearing date the 21st day of Aug., 1877, and severally acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the consideration, uses, and purposes therein expressed, and at the same time and place the said Kate, wife as aforesaid, having been examined by me privily and apart from her said husband and having the said instrument fully explained to her, she, the said Kate Hanrick, acknowledge- the same to be her

act and deed and declared that she had willingly signed,
30 sealed, and delivered the same without any fear or compulsion of her husband, and that she did not wish to retract the same.

In testimony whereof I have hereunto set my hand & affixed my official seal, at said city of New York, the 21st day of Aug., A. D. 1877.

ALEX. OSTRAUER,
Commissioner for Texas in New York,
No. 33 Park Row, N. Y. City.

Exhibit N.

Know all men by these presents that I Ellen Hanrick, spinster, of the city, county and State of New York, daughter of James Hanrick of Tomanine, county of Wexford, deceased, in consideration of one dollar and other valuable considerations paid by Eliza Mercy O'Brien, of Boston, county of Suffolk, State of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Eliza Mercy O'Brien, in her own right, her heirs and assigns all my right title, and interest in and to the following-described land situated in the State of Texas:

First. A tract of forty-four thousand, two hundred and eighty (44,280) acres in Williamson county.

Second. A tract of forty-four hundred and twenty-eight (4,428) acres in Falls county, which two tracts were granted to one Rafael Aguirrie.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county, which tract of land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight thousand seven hundred and eight, (48,708) — in Falls county which tract of land was granted to one
Antonio de la Serda.

31 Fifth. A tract of forty-eight thousand, seven hundred and
eight acres in Bell county which tract of land was granted to one Miguel Davilla.

Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county, which tract of land was granted to one J. F. De Rumazan.

Seventh. A tract of twenty-one hundred and fourteen acres in Liberty county which tract of land was granted to one Andrew Weaver, and also any interest I have or may have in or to any other land in the State of Texas, to have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Eliza Mercy O'Brien and her heirs and assigns to their own use and behoof forever; and I do hereby for myself and my heirs, executors and administrators, covenant with the said grantee her heirs and assigns, that I am lawfully seized of an interest in fee simple of the granted premises, as aforesaid, that they are free from all encumberances by me incurred, that I have good right to sell and convey the same as aforesaid and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee, and her heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Ellen Hanrick have hereunto set my hand & seal the third day of April, 1878.

ELLEN HANRICK.

Exhibit Q.

Know all men by these presents, that I, Honora Hanrick, spinster, of Brooklyn, Kings county, State of New York, daughter of James Hanrick of Tomamie, county of Wexford, Ireland, 32 deceased in consideration of one dollar and other valuable considerations paid by Eliza Mercy O'Brien, of Boston, county of Suffolk, State of Massachusetts the receipt whereof is hereby acknowledged do hereby give, grant, bargain sell and convey to the said Eliza Mercy O'Brien, in her own right, her heirs and assigns, all my right title and interest in and to the following-described land situated in the State of Texas to wit:

First. A tract of forty-four thousand and two hundred and eighty (44,280) acres in Williamson county.

Second. A tract of forty-four hundred and twenty-eight acres in Falis county, which two tracts of land were granted to one Rapheal Aguirrie.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county which tract of land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight thousand, seven hundred and eight (48,708) acres in Falls county, which t-act of land was granted to one Antonio de la Serda.

Fifth. A tract of forty-eight thousand seven hundred and eight acres in Bell county which tract of land was granted to one Miguel Divilla.

Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county which tract of land was granted to J. F. De Rumazon.

Seventh. A tract of twenty-two hundred and fourteen acres in Liberty county which tract of land was granted to Andrew Weaver, and also any interest I have or may have in or to any other land in the State of Texas, to have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Eliza Mercy O'Brien, and her heirs and assigns, to their own use, and behoof forever; and I do hereby for myself, and my heirs executors and administrators, covenant with the said grantee and her 33 heirs and assigns that I am lawfully seized of an interest in fee simple of the granted premises as aforesaid, that they are free from all incumbrances by me incurred, that I have good right to sell and convey the same as aforesaid, and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said grantee, her heirs and assigns forever, against the lawful claims and demands of all persons. In witness whereof, I the said Honora Hanrick, have hereunto set my hand and seal this third day of April in the year of one thousand eight hundred and seventy eight.

HONORA HANRICK.

Endorsement: 1728. Nicholas Hanrick *et al. vs.* Edward G. Hanrick. Pl't'ffs' second amended petition. This action is brought as well to try title as for damages and for partition. Filed March 8, 1882. Jesse Scruggs, C. D. C., F. C, by J. N. Watkins, dep'y.

34 In District Court of Falls County.

NICHOLAS HANRICK *et al.*
vs.
ED. G. HANRICK. } No. 1728.

STATE OF TEXAS,
—— *County.* }

Now comes the def'ts Philip O'Brien, Eliza M. O'Brien, wife of said Philip; William Brady, and Duncan Cameron and enter their appearance in the above entitled and mentioned cause, and say that each and all of them disclaim any interest whatever in so much of the land sued for by the pl'ffs as appears to have been conveyed to them in manner by virtue of the three certain deeds described in pl't'ffs' petition as having been executed by Annie Hanrick, Ellen Hanrick, Nicholas Hanrick in their *undivided* capacities to Eliza M. O'Brien or through or under the same.

J. T. BRADY,
Att'y for Def't- as Named Above.

35 NICHOLAS HANRICK *et al.*
vs.
EDWARD G. HANRICK *et al.* } No. 1728. Cause Pending in the District Court of Falls County, Texas.

Now comes Wharton Branch, def't in said cause, and says that pl't'ffs' petition is not sufficient in law as against this def't and John B. Sargent, and of this asks judgement.

Defendant says that the allegations in said petition seeking to set aside and vacate the deeds of conveyance from Elizabeth O'Brien, James and John Hanrick to def'ts Branch and Sargent, made by Philip O'Brien, as agent, bearing date the 14th Feb., 1878, and also deed from said *said* Sargent to def't Branch of same date, conveying interests in the estate of Ed. Hanrick, deceased, are not made by any person or persons authorized or having any right to be heard thereon, and that pl't'ffs are not proper parties to seek to vacate and set aside said deeds, and that, this being apparent on the face of said petition, judgement thereof is asked of the court.

3rd. That the allegations seeking to set aside certain deeds of conveyance, marked Exhibit- L, M, N, to Philip O'Brien and wife, Eliza M., defendants' vendors, for alleged failure to perform certain supposed conditions subsequent to said deeds and alleged to be agreed to be performed subsequent to the executing said deeds are not cause to set aside deeds; that it is apparent from said petition that said deeds are executed contracts and not executory contracts, and that said allegations are not sufficient cause for rescinding said contracts and are irrelevant and insufficient and should be stricken out of said petition, and of this he asks judgement; that the allegations in said petition as to said O'Brien representing to said pl't'ffs 36 that he had ample means and that it was necessary to convey the interest, if any, of pl't'ffs in said property to a native-born citizen, and that the said Philip would prosecute suits, and that said conveyances were made for trust purposes and were without consideration and were made on promises of said O'Brien, and alleging the failure to perform such supposed promises, taken jointly with the warranty on the face of said deeds, made of — said 4th amended petition and so marked K and L and M and N, are insufficient, contradictory, irrelevant, scandalous, and impertinent as against these def'ts, said Branch and J. B. Sargent, and should be stricken out of said petition.

WHARTON BRANCH, *Def't.*

Defendant, not waiving said exceptions, now comes and denies all and singular the allegations in said petition contained, and pleads not guilty. * * *

WHARTON BRANCH.

Endorsement: 1728. Nicholas Hanrick *et al. vs.* Edward G. Hanrick *et al.* Original answer of Wharton Branch. Filed this 26th day of March, 1883. John Reynolds, dist. clerk, by John Allen, d'p'y cl'k.

Answer of John B. Sargent. Filed March 21st, 1883.

NICHOLAS HANRICK *et al.* *vs.* EDWARD HANRICK *et al.* } Cause Pending in the District Court of Falls County, Texas, Feb'y Term, 1883.

Now comes the def't John B. Sargent and adopts as his own the several pleas in abatement and demurrers of his codef't, Wharton Branch, as if the same *was* set out herein; this def't denies — and singular the allegations contained in plt'ffs' petition except so far as they are committed in this answer, and he pleads not guilty; and this def't alleges that Philip O'Brien and also the makers of the power of attorney to him, to wit, James Hanrick, John Hanrick, & Elizabeth O'Brien, were without money and unable to 37 pay the expense of litigation necessary to establish their claim to share in the estate of Edward Hanrick, deceased, and, desiring to manage the said agency so as to make and realize out of said claim means sufficient to prosecute the same to effect, the said Philip O'Brien, well knowing the condition and value of said estate, by and with the knowledge and consent of his aforesaid principals, made and entered into, in the city of Boston, Mass., on

or about the second day of Feb., 1878, the following agreement with the def't, to wit: Said O'Brien agreed and *and* promised to convey by a good and valid conveyance to this def't one undivided one-half of all such shares or interest as belonged to himself and his three principals, Elizabeth O'Brien and John & James Hanrick, and each and all of them. This def't agreed, in consideration of such valid, *bona fide valid* conveyance of said one-half interest, to accompany said O'Brien to the State of Texas and return to Boston, Mass., and to pay the expenses of both of them there and back, and also to employ counsel and to carry on such litigation as def't Sargent might direct and might be necessary and proper in the premises, and also cause to be paid and settle certain board bills for said O'Brien and wife, then due, from the 1st day of Jan., 1878, to Mrs. Fannie J. Sargent, amounting to the sum of 64.25 dollars, and also to pay and settle the board bill of Mrs. Eliza M. O'Brien from the 2nd of Feb., 1878, until such time as the said O'Brien & this def't should go to Texas and return to Boston; and it was mutually agreed and understood that in no event was the sum of money to be paid out by this def't to exceed the sum of one thousand dollars; that in order to carry out the terms of said agreement and bargain said Philip O'Brien, on or about Feb. 2nd, 1878, in good faith made and executed and delivered to one William
38 Jenkins, Jr., in the city of Boston, a good and valid deed of
conveyance, with full covenants of warranty, conveying to said Jenkins all the entire interest of his said principals in and to said estate under and by virtue of his said certain power of att'y authorizing — so to do, and at and before the execution and delivery thereof stated and represented to the def't Sargent and others that he, the said Philip O'Brien, was only to account to his principals for a part of the proceeds of what might be realized as net gains or profits out of said estate, and that said power of att'y was coupled with an interest and was valid, irrevocable, and the same was so treated and recognized by pl't'ffs; that thereafter, on the same day, the said Jenkins reconveyed the same property to Eliza M. O'Brien, wife of Philip O'Brien, and on the same day Eliza M. and Philip O'Brien duly conveyed to this def't, John B. Sargent, one-half of said property by a valid deed, duly executed and acknowledged, and delivered the same to the def't, said deed containing full covenants of warrant*ee* and conveying one-half of all said shares of his said principals and each of them in said estate, be the same more or less, and thereafter, on the same day, the said Eliza M. O'Brien made, executed, and delivered to the said Philip O'Brien her certain power of att'y for the purpose of authorizing him to sell and convey the remaining half of the said property to such persons and for such price as the said Philip might seem best; there was no other consideration for the above-described conveyances than the above-mentioned bargain between said O'Brien and the def't Sargent: that on or about the 5th day of Feb., 1878, the said O'Brien & Sargent left Boston for Texas, and arrived in the city of Galveston about the 13th day of Feb., 1878, the def't Sargent being in possession of

said deeds, and also a deed from Nicholas Hanrick to O'Brien, 39 mentioned in pl'ffs' petition, and said Philip O'Brien having said power of att'y from Eliza M. O'Brien to herself in his possession.

The said O'Brien and Sargent came to the office of Wharton Branch, in the city of Galveston, and obtained said Branch's opinion as to the legal effect of said power of att'y from the said Eliza M. O'Brien to Philip O'Brien, which was that he did not deem the power of att'y sufficient to authorize said Philip O'Brien to sell and convey the remaining half of said property, as was the original intention at the time of its execution; whereupon the said Philip O'Brien requested the def't Sargent to accept other conveyances in lieu of the said deed of *of* conveyance made in Boston; that in compliance therewith the conveyance direct to Sargent for one-half of said property, dated Feb. 14, 1878, was made in lieu of the former conveyance made in Boston, intending thereby to vest in the def't Sargent the same property as agreed on in Boston and for the same consideration and no more, and intending by the surrender of said conveyance made in Boston to remove any restriction upon the free control to O'Brien of the remaining half of said property not conveyed to the def't Sargent. The def't Sargent further shows that he has fully complied with his contract and paid the full consideration for which said deeds of conveyance *was* made and executed, as shown by the bill of particulars hereto attached, marked Exhibit A, and made a part of this answer, all of which sums of money were paid out at the special instance and request of said Philip O'Brien or were paid to him at the time stated in the said exhibit, amounting to the sum of $912.61; that on May the 7th, 1878, said O'Brien and wife left the boaring-house where they were being supplied with board and lodging with their own accord, 40 there having been paid them at that time $847.56, and expressed themselves as fully satisfied and as having been fully paid, and never at any time thereafter demanded or requested of the def't Sargent any further payments for said conveyances, but that afterwards, in 1882, the def't Sargent, finding O'Brien in need, paid him the further sum of $65.05, as shown in Exhibit A, and the said O'Brien again acknowledged himself as fully paid under the terms of said agreement and as having received full consideration for said conveyances; that the said def't Sargent, in compliance with his said agreement, did employ Wharton Branch, an att'y-at-law, residing at Galveston, Texas, with the consent and at the instance and request of said Philip O'Brien and conveyed to said Branch one undivided half of the interest conveyed to him by the said O'Brien, and in order to induce said Branch to accept said conveyance said O'Brien promised and agreed to aid in establishing said claim and procure conveyances to cure any defect in his power of att'y and to furnish immediately on his return to Boston, say March the 4th, 1878, to said Branch a sum of money sufficient to pay expenses of litigation, not less than two hundred and fifty dollars, said sum to be returned to said O'Brien out of the interest conveyed by said Sargent to said Branch when realized therefrom; that said O'Brien, on his return to Boston, failed to comply with his agreement with said Branch and remit the sum of $250.00, and while said Branch and def't Sargent were faithfully carry- out their said agreements and the def't Sargent was furnishing said O'Brien with money to obtain conveyance from the children of James Hanrick and to obtain testimony in his behalf said O'Brien secretly made pretended agreements with William Brady and others and hindered 41 the defendant- in their work in his behalf, and entailed upon the def't Sargent expenses and damages to the amount of $1,130 in items of expense as shown on said Exhibit B, hereto attached and made a part hereof; that all of such damages have been caused by William Brady wrongfully attempting to set aside the said conveyances made by said Philip O'Brien to this def't; that at the time and before the date of the pretended conveyance from said O'Brien to William Brady the said Brady had full knowledge of the fact that said O'Brien had executed and delivered to this def't said conveyance, and that said O'Brien had rec'd the full consideration therefor for the def't Sargent; that the delay caused by the said Philip O'Brien and Brady's unlawful interference with the def't *and* Sargent and his codef't, Wharton Branch, in receiving said estate from adverse possession of third parties, said William Brady, Philip O'Brien, and wife have wilfully, maliciously, and fraudulently damaged the said Sargent in the sum of ten thousand dollars, all of which the def't Sargent pleads in reconvention; that said Philip O'Brien and Eliza M. O'Brien otherwise violated their said contract whereby they agreed to accept board and lodging at a reasonable price in lieu of cash by so conducting themselves in so violent and indecent a manner that it was not possible to board them or permit them or either of them to remain in the house where they had agreed to remain and conduct themselves in a decent and orderly manner, and that said Philip and Eliza M. O'Brien have obstructed and prevented in all possible ways and means since on or about March 4th, 1878, the favorable action of said def't- Sargent and Branch in behalf of th*ie*r interest in said estate, and have at all times concealed from Sargent and Branch their 42 aforesaid acts and doings and have never at any time released said Branch or Sargent from their said contract or offered in any way to reimburse them; that said Branch has at all times and often, as requested, give- his time and attention to the makers of said estate and has faithfully discharged every duty required of him under his employment; and the def't Sargent further shows that he has been ready and willing to furnish for said O'Brien to said Branch the sum of $250 and more money if necessary, but said O'Brien prevented this def't Sargent from so doing, refusing to allow such sum to go as a credit or payment on the said consideration of $1,000 mentioned in said deed to said Sargent, as well as other wrongs and injuries done by said Philip and Eliza M. O'Brien and William Brady. This def't further says that at the date of the said deed to Sargent and Branch the right of said principals of said O'Brien to inherit a part of the said estate was not certain and the estate of Edward Hanrick, deceased, was in litigation for almost the entire property with various parties in possession adversely to the said estate, and that the price paid as the consideration for said conveyance under the state of the title of said O'Brien was reasonable and fair as agreed to by the said O'Brien and def't Sargent and was more than said O'Brien could get from any other party, and that all the items of such consideration were made for the sole purpose of enabling the said O'Brien to attain and carry out the wishes of said principals as expressed in their said power of att'y to said O'Brien, and the sums of money paid & expended at the instance and request of O'Brien was a full consideration for the conveyances to this def't. The def't Sargent further says that in case it should appear in any way that any portion of the purchase-money be still *and* from him to O'Brien that he is now and had always 43 been ready and willing to pay the same and tenders said amount in open court whenever said amount may be ascertained, if any. This def't, John B. Sargent, prays that the pl't'ff take nothing by their suit, and that he recover judgement establishing his title to the interest claimed by him in the property described and set out in pl't'ffs' petition and for damages aforesaid and all cost and full and gen eral relief.

R. BARNARD,
Att'y for John B. Sargent.

Exhibits A & B omitted.

44 In the District Court of Falls County, July Term, 1885.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

To the honorable judge of said court:

And now comes the plaintiffs in the above-entitled cause, —, with leave of the court to be hereafter obtained, file this their seventh amended original petition in lieu of their sixth amended original petition filed in said cause on the — day of June, 1885, and, dismissing as to all parties heretofore joined who are not herein specially named, either as plaintiffs or defendants, say:

1. Your petitioners, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Eliza Whelan and Catherine O'Neill, who now prosecutes this suit in her own right, her husband, Martin O'Neill, having died since the institution of the same, hereinafter styled plaintiffs, complaining of E. G. Hanrick, E. J. Gurley, Philip O'Brien, individually and in his representative capacity as the sole heir and legal representative of his former wife, Eliza M. O'Brien, deceased, she having died since the institution of this suit, and of William Brady, John B. Sargent, and also of Wharton Branch, individually and in such representative character as he may have as the pretended administrator of the estate of the said Eliza M. O'Brien, deceased, and also

of Wm. E. Kendall and Duncan Cameron, respectfully represent unto your honor:

2. That the said Annie, Ellen, and Nicholas Hanrick and the said William Brady and Duncan Cameron are residents of the State of New York and county of New York, with the exception of Annie Hanrick, who is a resident of the county of Kings, in said State; that the said Elizabeth and Thomas Clare and Peter Whelan, 45 who prosecutes this suit for himself individually and who also appears as next friend of his children, the said Elizabeth and Bridget Whelan, minors, and who asks in their behalf that guardian *ad litem* be appointed for them, and Mary Whelan and Robert Whelan are residents of Wexford county, Ireland, and subjects of the United Kingdom of Great Britain and Ireland, and that the said Catherine O'Neill is a resident of the county of Dublin, Ireland, and a subject of said kingdom; that the said Wharton Branch resides in the county of Galveston, Texas, and the said John B. Sargent resides in the city of Boston, county of Suffolk, State of Massachusetts, and the said Wm. E. Kendall resides in Harris county, Texas.

3. That heretofore, to wit, on the — day of ——, A. D. 1866, or thereabouts, one Edward Hanrick died intestate in Montgomery county, Alabama, seized in fee simple of the lands described in Exhibit A, hereto attached and made a part of this petition, lying and being situated in Falls county, Texas; that he left surviving him as his sole heirs a nephew, to wit, the defendant E. G. Hanrick, who was the only child of his deceased brother Philip; a sister named Eliza O'Brien, otherwise Elizabeth O'Brien, she being the widow of Martin O'Brien, deceased, and two brothers, named respectively Joh*m* and James Hanrick; that the said John Hanrick died intestate in 1870 in Wexford county, Ireland, without issue of body, he never having married; that the said James Hanrick died intestate in 1875 or thereabouts in Wexford county, Ireland, leaving as his sole and only heirs, his wife having previously died, five children, to wit, the said Nicholas, Annie, and Ellen Hanrick and the said Catherine O'Neill and the said Elizabeth Clare and four grandchildren, to wit, the said Robert, Mary, Bridget, and Elizabeth Whelan, they being the children of a deceased daughter 46 named Mary, who married the said Peter Whelan.

4. That the said Elizabeth O'Brien, otherwise Eliza O'Brien of said Rexford county, Ireland, on the — day of April, 1878, or thereabouts, conveyed all her interest in said lands to the defendant, the said Eliza M. O'Brien, her interest therein being, as shown by the facts hereinbefore set forth, an undivided one-third interest; that the said Eliza M. O'Brien, joined by her husband, Philip O'Brien, subsequently conveyed to said Wm Brady an undivided one-half of the interest in said lands conveyed to her by said Elizabeth O'Brien, of Ireland; and afterwards they, the said Eliza M., joined by her husband, did convey to said Wm. Brady additional portions of her interest in the same, and did finally, on the 9th day of August, 1884, convey to the defendant Wm. E. Kendall all of her remaining right, title, claim, and interest in and to said lands;

that subsequent to the execution of said deed in favor of said Kendall said Eliza M. O'Brien departed this life, and that hence the said Kendall is now the legal representative of all such interest as the said Eliza M. O'Brien had in and to said lands at the time of the execution of said conveyance in his favor.

5. That the said John and James Hanrick and the said Eliza O'Brien, of Ireland, were at the time of the death of said Edward Hanrick, deceased, subjects of the United Kingdom of Great Britain and Ireland, the said Nicholas Hanrick at that time, however, being a citizen of the United States; that by virtue of a general public statutory law of said kingdom, in force since the — day of ——, A. D. 1870, real and personal property of every description within said kingdom may be taken, acquired, held, and disposed of by a citizen of the United States in the same manner in all respects as by a natural-born subject of said kingdom, and a title to real and
47 personal property of every description situated within said kingdom may be derived through, from, or in succession to a citizen of the United States in the same manner in all respects as through, from, or in succession to a natural-born subject of said kingdom.

6. That administration on the estate of said Edward Hanrick, deceased, was long since closed, and that no portion of the lands described in said Exhibit A have been partitioned among his heirs and parties holding under them, and that, as shown by the facts hereinbefore stated, plaintiffs were, on the first day of January, 1877, entitled to an undivided one-third interest in fee simple in and to said lands, and were in the peaceable possession and enjoyment of the same; that afterwards, to wit, on the 1st day of December, 1878, the defendants E. G. Hanrick and E. J. Gurley unlawfully entered upon all of said lands and disposs-ed plaintiffs of said premises and withheld and still withholds from them possession thereof, to their damage in the sum of $50,000.00.

7. And the said Annie, Ellen, and Nicholas Hanrick, complaining especially of the defendant Philip O'Brien, individually and in his said representative character, and of William Brady, and also of Wharton Branch, individually and in such said representative capacity as he may have, and of John B. Sargent and Wm. E. Kendall, respectfully represents that heretofore, to wit, on the — day of ——, A. D. 1877, and on the — day of ——, A. D. 1878, respectively, they executed and delivered to said Eliza M. O'Brien three several deeds of conveyance, each being in favor of said Eliza M. O'Brien and each apparently conveying to her for a valuable consideration all their right, title, and interest in the estate of Edward Hanrick, deceased, and in and to the lands described in said Exhibit A. Said deed executed by Nicholas Hanrick bears date on the 21st day of August, 1877, or thereabouts, and is recorded in vol. —, page
48 —, of the records of deeds of Falls county, Texas, the wife of the said Nicholas Hanrick, to wit, Kate Hanrick, having joined with him in the execution of the same; said deeds executed respectively by said Annie, otherwise Honora Hanrick, and by the said Ellen Hanrick bear date on the 3rd day of April, A. D. 1878,

or thereabouts, and are recorded in vol. —, pages —, of the records of deeds of Falls county.

8. That no consideration of any value or description whatsoever was ever paid or promised in consideration of the execution of said deeds, nor was it intended by any of the parties interested in the execution of the same that other than a bare legal interest should be vested thereby in said Eliza M. O'Brien; that the execution of said three deeds was procured by means of the following representations made and methods pursued by said Eliza M. O'Brien, who was represented in this matter by her husband and agent, Philip O'Brien. Said Philip represented that they had been informed by their counsel in Texas that plaintiffs could not recover their interests in the estate of Edward Hanrick, deceased, and in the lands in controversy, described in Exhibit A, unless they first transferred the same to a native-born citizen of the United States; that having been born subjects of a foreign government they could not maintain a suit in their own names for the recovery of their interests in said lands in the courts of the State of Texas under the laws of said State, said lands being at that time claimed adversely by the defendant E. G. Hanrick, and the said Eliza M. O'Brien and the said Philip thereupon promised the said Annie, Ellen, and Nicholas Hanrick that if they would execute said deeds she, said Eliza, would immediately institute and cause to be instituted in her own name all suits and legal proceedings necessary for
49 the recovery of said lands, and that after the same were recovered she would reconvey to the said Annie, Ellen, and Nicholas their interest in the same without other charges than their *pro rata* share of the expenses of said anticipated litigation, said representations and promises being made by her agent and husband, the said Philip, who first suggested to them that the said Eliza M. O'Brien was a suitable and proper person to whom they could convey their said interests, and he also represented that he had ample means at his disposal with which he could carry on said litigation; and the said Nicholas, Annie, and Ellen Hanrick, believing said representation and relying on the same and on said promises, and having no knowledge to the contrary, and being wholly uninformed in regard to the laws of the State of Texas in reference to the rights of aliens, they never having visited or resided in said State, and trusting entirely to the candor and good faith of said Philip in regard to said representations and promises, did execute said conveyances as aforesaid.

9. That at the time of the execution of said deeds as aforesaid in favor of Annie and Ellen Hanrick, or soon thereafter, the said Philip and his wife signed and delivered to each of them a memorandum showing that said deeds were executed for said trust purposes and containing in substance a promise to reconvey them their interests in said lands when the same were recovered, less expenses incurred in recovering the same; that both of said memoranda were of the same purport and substance; that said Ellen lost her memoranda soon after it was given to her; that said Eliza M. and her said husband repeatedly promised to make and deliver to

the said Nicholas a similar memorandum, but that they failed and afterwards expressly refused so to do.

50 10. That on the — day of ——, A. D. 1878, the said Eliza M. O'Brien and her said husband conveyed to the said William Brady, by deed dated on said last-named day, one-half of the interest in said lands conveyed to her by the said Annie and Ellen without their knowledge or consent and after they, the said O'Brien and wife, had been informed that the former had repudiated said conveyances in trust.

11. That on the — day of ——, A. D. 1878, the said Philip and wife, by deed dated on said day last named, conveyed an undivided one-fourth interest in the *interest in* said lands conveyed to them by the said Nicholas to one Nell B. Carpenter, who subsequently conveyed the interest thus acquired *by* the defendant William Brady.

12. That on the 4th day of February, A. D. 1882, or thereabouts the said O'Brien and wife conveyed to one Duncan Cameron all the remaining interest conveyed to them by the said Annie and Ellen Hanrick, and the said Cameron subsequently conveyed the same to said William Brady.

13. That on the 14th day of February, A. D. 1878, or thereabouts the said O'Brien executed a conveyance in favor of said defendant John B. Sargent, and also one in favor of defendant Wharton Branch, which may appear or may be construed to appear as vesting in the said Branch and Sargent an undivided interest in the *interest in* said lands inherited by the said Nicholas. In said conveyance referred to in this paragraph the said Philip states that he is acting for himself and wife, Eliza M. O'Brien, and for the said James Hanrick, John Hanrick, and Elizabeth O'Brien, of Ireland, all of whom it is stated in said deeds are entitled to an undivided three-fourths interest in said estate and lands.

14. That all of said conveyances hereinbefore referred to are recorded in the records of deeds of Falls county, Texas, and
51 were made without the knowledge or consent of the said
Annie, Ellen, and Nicholas Hanrick; that all of said conveyances above referred to were made without consideration paid by the vendees and with full knowledge on their part of the fact that the said Annie, Ellen, and Nicholas Hanrick had not conveyed to or vested in the said Eliza M. O'Brien the real or equitable title to the interest in said lands inherited by them; that the consideration of said conveyances executed in favor of the said Branch and the said Sargent was not a monied consideration or its equivalent, but some kind of an agreement on the part of the said Branch and Sargent to prosecute or cause to be prosecuted suit for the establishment of the interests of the grantors in and to said lands, the exact terms of the same being to plaintiffs unknown, and that the said Branch and Sargent took such interest, if any, as they acquired from the said Nicholas through the said Philip in privity with him, the said Philip; that the said Branch and Sargent never complied with their said agreement relative to the institution and prosecution of said suits, and that neither the said Annie, Ellen, or Nicho-

las Hanrick received any consideration from the execution of said deeds executed by them in favor of said Eliza M. O'Brien as aforesaid, nor have said vendees, Brady, Branch, Sargent, Carpenter, and Cameron, ever paid any consideration for said conveyances received by them; that neither the said Philip and his wife nor any of the parties to whom they conveyed portions of their interest in said lands conveyed to them by said Annie, Ellen, and Nicholas have ever taken any steps whatsoever or offered to take any steps whatever for the recovery of their said interests, but have wholly failed, neglected, and refused so to do.

15. And plaintiffs Annie, Ellen, and Nicholas Hanrick charge
that said representations made by the said Philip and wife
52 which induced them to make said conveyances were all wil-
fully false and fraudulent, and that the said Philip and wife deliberately planned to perpetrate a fraud on the said Nicholas, Annie, and Ellen and did thus obtain from them said conveyances by fraud and artifice, and the same were executed by mistake on their part.

16. And plaintiffs further say that the said defendant, Ed. J. Gurley, claims an interest in the lands appertaining to the estate of the said Edward Hanrick, deceased, including those described in said Exhibit A, of the nature and extent of which claim plaintiffs are not fully informed, but in regard to the validity of which plaintiffs say that the same is wholly unfounded in law or equity as far as the same relates to or affects the interest of plaintiffs in this suit; that the said Gurley had for many years anterior to the institution of this suit and has continuously therefrom down to the present time been acting as and, in fact, being the authorized agent and attorney of the said Ed. G. Hanrick; that as his agent and attorney he has sold off by metes and bounds divers and sundry portions of the lands described in said Exhibit A to divers and sundry persons by deeds which purported to convey to such persons all the title of which the said deceased Edward died seized, the said Ed. G. Hanrick claiming to be the sole and only heir of the former, as hereinbefore stated, and that during the period next before referred to herein the said Ed. G. Hanrick, by himself individually and through other agents besides the said Gurley, had sold off and disposed of in the same manner other portions of said tract of land described in said Exhibit A, and that in no instance in making said sales, either by himself directly or through the said Gurley or other agents, had
the said Gurley joined the said Hanrick, as plaintiffs are in-
53 formed and believe, in the execution of said sales; neither
was any portion of said land assessed against him, Gurley, for taxes; neither did the records of Falls county disclose any conveyance of lands or interests in lands appertaining to said estate to the said Gurley either from the said Ed. G. Hanrick or from the deceased Edward, nor did ever the acts or words of the said Gurley during the periods last referred to in any manner disclose the fact, if such were the fact, that at the time of the institution of this suit the said Gurley had an interest in said land itself. On the contrary, the said Gurley did until long after the institution of this suit

repeatedly state to plaintiffs, through their counsel, that while the said deceased Edward Hanrick virtually agreed to give him an interest in the proceeds of the sale of said lands, and though said agreement was in whole or in part reduced to writing, yet that the original memorandum relating to the same had been lost, and that he, Gurley, did not consider that he had any claim upon the land itself of said estate by virtue of any agreement with the said deceased Edward which he could enforce against said non-resident heirs, but that he did propose to sue them for valuable services rendered in their behalf and recover a personal judgment against them for the same, of which representations and statements on the part of the said Gurley the said Ed. G. Hanrick, through his agents and attorneys, had full knowledge, the said Gurley being then and there an attorney for the said Edward G. Hanrick, actively engaged in assisting the latter in resisting the claims of said non-resident heirs and of parties holding under them.

17. The plaintiffs, by virtue of the facts set forth next above, in response to a claim of the said Gurley, were led to believe and
did, in fact, believe that the said Gurley had no interest in
54 said lands described in said Exhibit A which would render
it necessary or expedient to join him as a party defendant in this suit, but that some time after the institution of this suit the said Gurley did join the said Edward G. Hanrick in the execution of deeds conveying certain portions of said lands last referred to by metes and bounds to divers and sundry persons in execution of contracts of sale previously made, and the said Gurley did, to wit, on or about the — day of February, 1882, inform plaintiffs for the first time, through their agent and attorney, that he, Gurley, had been informed by the said Branch that he, the said Branch, had documents in his possession signed by the said Edward Hanrick, deceased, which would probably enable the said Gurley to establish the existence of such a contract, evidenced by a memorandum in writing, or would give him, the said Gurley, an equitable interest in said lands; and plaintiffs are informed and believe that the said Gurley now publicly asserts that he can establish the existence of such a contract with the deceased Edward as will give him an equitable interest of and in and to one-third of the lands described in said Exhibit A, and so notoriously claims the same, and that these assertions, coupled also with the fact that the said Gurley has joined the said Edward G. Hanrick in the execution of said deeds as aforesaid, cast a cloud upon the title of plaintiffs in and to said lands, greatly to their prejudice and injury.

18. And plaintiffs further say that since the 1st day of January, 1878, the said Ed. G. Hanrick has been in the sole and exclusive possession of portions of the tracts of land described in said Exhibit A; that the annual value of the rents and profits of the same, according to the best of plaintiffs' information and belief, have been since said 1st day of January, 1873, the sum of $10,000.00 per
annum; that during the period last aforesaid the said Ed.
55 G. Hanrick has utterly denied the right of plaintiffs and the

said Eliza O'Brien, of Ireland, to participate in the enjoyment of any portion of said rents and profits.

19. That the said Ed. G. Hanrick has, according to the best of plaintiffs' information and belief, cut, felled, carried away, sold off, and disposed of growing timber on said land since the 1st day of January, 1879, the value of $40,000.00, nor has the said E. G. Hanrick ever accounted for the same to plaintiffs or any portion thereof.

20. The premises considered, plaintiffs pray that the defendants be cited, as the law directs, to answer this petition; that said conveyances executed by the said Annie, Ellen, and Nicholas Hanrick be cancelled and decreed by the court to be nul- and void, and that plaintiffs have and recover of defendants a judgment for an undivided one-third interest in said lands, and that a writ of possession issue in their favor therefor, and that they recover of defendant Hanrick the sum of $50,000.00 as their share of said rents and profits, and the further sum of $20,000.00 as their share of the damages for injuries to said timber, and that commissioners be appointed to partition said lands, and that the interest of plaintiffs therein be set aside to them, and that they recover their costs and have all other relief, both general and special, to which they may be entitled.

21. And in order that the lands described in said Exhibit A, which are situated in Falls county, Texas, may be, as herein prayed, partitioned among said parties who are entitled to an undivided interest in the same, so that justice and equity should be meted out to all persons interested in and to be affected by said partition, plaintiffs further represent unto you- honor:

56 22. That at the time of the death of the said Edward Hanrick, deceased, and even since said time the said Eliza O'Brien and the said James and John Hanrick and their said descendants, with the exception of the said Annie, Ellen, and Nicholas Hanrick, resided and have continued to reside in said Kingdom of Great Britian and Ireland, nor did they or either of them ever reside in the State of Texas or have an agent in said State until after the year 1877, and that previous to that time none of the plaintiffs had definite knowledge of the existence of their said interest in said lands nor of the extent of the same; that on the — day of ——, A. D. 1867, or thereabouts the said defendant, Ed. G. Hanrick, took out letters of administration in the probate court of Falls county, Texas, on the estate of the said deceased Edward, and duly qualified himself as the administrator of said estate, and as such took possession of all the papers, land, titles, and effects, real and personal, of which the said Edward Hanrick, deceased, died seized and possessed of in the State of Texas, and has since continued in possession of the same as administrator as aforesaid until the close of said administration; that although at the time of taking out said letters of administration he was fully informed that the said Eliza O'Brien and James and John Hanrick claimed to be respectively a sister and brother of the deceased Edward and the facts and circumstances sufficient to create a presumption of the truthfulness of their said claim, yet he never took any steps to ascertain whether in fact they

were heirs or not of the said deceased Edward, nor did he even report to said court the existence of said heirs or of their claim to be heirs, nor did he even take any steps to ascertain whether the deceased Edward had any other relations or heirs besides himself; but, with covine and fraud and the deliberate design of appropriating solely to himself all of said effects of which the said 57 deceased Edward died seized, he concealed from said nonresident heirs and their said ancestors and from the said Eliza O'Brien, of Ireland, the knowledge of the existence of their rights, and concealed the same from said probate court, and represented to said corut and to the world at large that he was the sole and only heir.

23. That the title to certain portions of the land described in said Exhibit A, situated in said Falls county, of which the deceased Edward died seized were of doubtful validity, and that the said Edward G. Hanrick, claiming to be the sole and only heir as aforesaid of the said deceased Edward, has sold off and disposed of certain portions of said land by sales and compromises, as hereinafter detailed.

24. That a portion of the said La Serda grant is in conflict with 2,641 acres of a league of land granted to Michael Sessum, for the description of which reference is made in Exhibit B, hereto attached and made a part of this bill; that the saod Ed. G. Hanrick, holding out to the world at large and representing to one Catherine Cavitt in particular that he was the sole and only heir of the said Edward Hanrick, deceased, did compromise and agree with the said Catherine Cavitt and did, by deed of conveyance executed on or about the 8th day of March, 1870, quitclaim, release, and convey unto the said Cavitt 2,641 acres of land in consideration of the sum of $1,320.40 to him in hand paid, said conveyance purporting to convey all the title in and to said tract of land of which the said Hanrick died seized, she, the said Catherine, claiming said tract of land at the time of the execution of said deed by title from and under the said Sessum; that no portion of said sum of $1,320.05 received by the said Hanrick in said compromise has ever been paid to plaintiff or to said Eliza O'Brien, of Ireland; that said 2,641 acres of land were at the time of the execution of said compromise 58 and are now reasonably worth the sum of $8,000.00.

25. That a tract of land embracing about 22,000 acres, more or less, the same being a part of the said Atanacio de la Serda eleven-league grant, was and is in conflict with a tract of ten leagues of land granted to Thos. J. Chambers by the proper authorities of Coahuila and Texas, for a description of which reference is made to Exhibit C, hereto attached and made a part of this petition; that on the — day of ——, A. D. 1860, the said Edward Hanrick, deceased, instituted in the circuit court of the United States at Austin, Texas, two suits of trespass to try title for the recovery of the portion of the La Serda grant embraced in said conflict referred to next above, the same being known as the Chambers conflict, said suits being instituted against the said T. J. Chambers and other parties holding said tract, which suits were shortly there-

after consolidated and styled Edward G. Hanrick, adm'r, *vs.* David Barton *et al.*, No. 681, and Edward Hanrick, adm'r, *vs.* John E. Franks *et al.*, No. 682; that on the — day of —— the said Edward G. Hanrick suggested to the court in the said cause the death of the said Edward Hanrick, deceased, and appeared therein as his administrator and was recognized as such by the court, and that he, the said Edward G. Hanrick, thereafter continued the prosecution of said cause as such administrator; that on the — day of ——, 1874, or thereabouts, judgment was rendered in said cause in favor of the defendants for the entire tract of land embraced in said Chambers' conflict, from which judgment an appeal, by writ of error, was taken by said administrator to the Supreme Court of the United States, at Washington; that afterwards, to wit, on the — day of ——, 1877, said writ of error was dismissed on account of said administrator failing to prosecute the same, and no further proceedings have been had in said cause since the dismissal thereof,
said dismissal having been permitted by said administrator
59 in furtherance of and as a part of a certain compromise settlement of sais suit, as hereinafter detailed.

26. That on the — day of ——, A. D. 1875, or thereabouts, one C. Baker claimed to be the owner of the two tracts of land described in Exhibit D, hereto attached and made a part of this petition, the same containing about 1,200 acres, said tracts of land being portions of said T. J. Chambers' conflict, he, the said Baker, then holding the same and being in possession thereof by virtue of a title thereto acquired by him from the executor of the said T. J. Chambers, the latter then being dead, and said title thus having been purchased by said Baker during the pendency of said causes instituted by Edward Hanrick, deceased, styled No. —, etc.; that on the day last aforesaid said Edward G. Hanrick, administrator as aforesaid, and representing himself to be the sole and only heir of said Edward Hanrick, deceased, did compromise and agree with the said Baker, and in consideration of the sum of eight thousand dollars, to him paid by the said Baker, and in consideration also of a conveyance to him by the said Baker of a portion of said tract claimed by the latter, for a description of which reference is made to exhibit hereto attached and made a part of this petition, the said Ed. G. Hanrick did quitclaim, release, and convey to the said Baker said tract described in said Exhibit D and claimed by the latter, except two portions of the same conveyed by the latter to said Ed. G. Hanrick as aforesaid and described in said exhibit.

That said representation- in regard to his being the sole heir of Edward G. Hanrick, deceased, were believed and relied upon by the said Baker, and the deed of conveyance executed in favor of the latter in the said compromise with him described said tracts of land by metes and bounds and did purport to convey to him,
Baker, all the title in and to the same of which the said
60 Edward Hanrick died seized; that said tracts of land thus
released to the said Baker were at the time of said release and are now reasonably worth the sum of $8,000; that no portion of said $8,000 received by the said Ed. G. Hanrick in consideration

of said conveyance has ever been paid or tendered to plaintiffs or any of them, or to the said Eliza O'Brien, of Ireland, or to any of said non-resident heirs or their assigns, and that said tracts of land are now in possession of persons claiming the same under title from the said Chambers.

27. That on the — day of ——, A. D. 1876, one J. S. Jones claimed to be the owner of the several tracts of land described in Exhibit E, hereto attached and made a part of this petition, the same containing in all about 1,800 acres, said tracts of land being portions of the T. J. Chambers conflict, he, the said Jones, then holding the same and being in possession thereof by virtue of a title thereto acquired by him from the said T. J. Chambers; that on the day last aforesaid the said Ed. G. Hanrick, administrator as aforesaid, representing himself to be the sole heir of Edward Hanrick, deceased, did compromise and agree with the said Jones and in consideration of the sum of $2,554 to him paid by the said Jones did quitclaim, release, and convey to the said Jones said tracts of land described in said Exhibit E; that said representation- in regard to his being the sole heir of the deceased Edward were believed by the said Jones and relied on by him, and the deed of conveyance executed in his favor in said compromise described said tract of land by metes and bounds and did purport to convey to him, Jones, all the title in and to the same of which the said Edward Hanrick died seized; that said tracts of land thus released to the said Jones were then and are now reasonably worth the sum of $12,000 and are now in possession of parties claiming title thereto under the
said Chambers; that no portion of said $2,554 received by
61 the said Ed. G. Hanrick in consideration of said conveyance
has ever been paid or tendered to plaintiffs or either of them, or to the said Eliza O'Brien, of Ireland, but the said Ed. G. Hanrick has appropriated the same wholly to his own use and benefit.

28. That on the — day of ——, A. D. 1877, one Walter Gresham claimed to be the owner of the several tracts of land described in Exhibit F, hereto attached and made a part of this petition, he having purchased the same from the administrator of the said T. J. Chambers, deceased, the same containing in all about 1,942 acres, said tracts of land being portions of said Chambers' conflict; that on the day last aforesaid the said Ed. G. Hanrick, administrator as aforesaid, representing himself to be the sole heir of Edward Hanrick, deceased, did compromise and agree with the said Gresham and in consideration of the sum of $250 to him paid by the said Gresham did quitclaim, release, and convey to the said Gresham said tracts of land described in said Exhibit F; that said representations in regard to his being the sole heir of the said deceased Edward were believed by the said Gresham and relied on by him, and the deed of conveyance executed in his favor in said compromise described said tracts of land by metes and bounds, and did purport to convey to him, the said Gresham, all the title in and to the same of which the said Edward Hanrick died seized; that the said tracts of land thus released to the said Gresham were then and

are now reasonably worth the sum of $15,000 and are now in possession of parties claiming title thereto under the said T. J. Chambers; that no portion of said $250 received from the said Gresham has ever been paid or tendered to plaintiffs or to the said Eliza O'Brien, of Ireland, the said Ed. G. Hanrick having appropriated the same wholly to his own use and benefit.

62 29. That the total sum received by the said E. G. Hanrick for said compromises, together with interest on the same at the rate of eight per cent. per annum, from the first day of January of the several years next following the date of such compromise to the first day of July, 1885, is shown in the following table, to wit:

Description of tracts.	Date of compromise.	No. of acres.	Consideration.	Interest.	Amount.
Exhibit B—Catherine Cavitt.	M'ch 8, 1870	2,641	$1,320 50	1,531 78	2,852 28
Exhibit D—C. Baker........	1875	1,200	8,000 00	6,480 00	14,480 00
Exhibit E—I. S. Jones......	1876	1,800	2,554 00	1,736 72	4,290 72
Exhibit F—Walter Gresham.	1877	1,942	250 00	147 50	397 50
Totals.................	....	7,583	$12,124 50	$9,896 00	$22,020 50

30. That heretofore, to wit, on the — day of ——, A. D. 1877, all that portion of said Chambers conflict which had not been previously sold by the said T. J. Chambers during his lifetime or by his executors and administrators subsequent to his death was sold at administrator's sale to one Geo. E. Lane; that afterwards, to wit, on the — day of ——, A. D. 1877, said Geo. E. Lane and said Ed. G. Hanrick, administrators aforesaid, did compromise and agree and settle amicably between themselves their respective and conflicting claims in and upon said tract of land in conflict; that by the terms of said compromise, in pursuance of which deeds were mutually exchanged by said parties to the same, the said Ed. G. Hanrick ratified and confirmed the same and quitclaimed and released unto all persons who had, previous to the day last named, purchased land within said conflict from the said T. J. Chambers or his heirs, executors, and administrators, and unto all assignees of said purchasers, all his, the said Ed. G. Hanrick's, right, title, and
63 interest in and to the same, and did also convey to the said Lane the three several tracts of land described in Exhibit G, hereto attached and made a part of this bill, the same being a part of the land embraced within said conflict and containing in the aggregate about 2,800 acres, and the said Lane, in consideration of the said compromise, did quitclaim, release, and convey to said Ed. G. Hanrick all his, the said Lane's, right, title, and interest in and to all that portion of said conflict which had not been up to that time sold and conveyed by the said T. J. Chambers or his heirs, executors, and administrators, except said tracts, containing about 2,800 acres, described in said Exhibit G, which he reserved to himself, and did also quitclaim, release, and convey unto all persons who had previous to said day last named purchased land within said conflict

from said Edward Hanrick, deceased, or the said Ed. G. Hanrick, and unto all assignees of said purchasers, all his, the said Lane's, right, title, and interest in and to the same. The field-notes of the tracts of land which embraces all of said tracts of land sold by the said Chambers during his lifetime and by his executors and administrators since his death and which were thus released by the said Ed. G. Hanrick are found in Exhibit I, hereto attached and made a part of this bill, except the said tracts conveyed to Lane and described in Exhibit G; that at the time said compromise was effected the said Edward G. Hanrick held out to the world, and represented to the said Lane in particular, that he was the sole and only heir of the said deceased Edward, which representations were them and there believed and relied upon by the said Lane, and it was agreed at the time of making said compromise last referred to that said suit No. 681 & 682, styled Edward Hanrick *et als.*, etc., instituted
by the deceased Edward, then pending by writ of error in
64 the Supreme Court of the United States, at Washington,
should be dismissed and the further prosecution of the same
abandoned; and, accordingly, on the — day of ——, 1877, said suit was dismissed for want of prosecution by the Supreme Court of the United States at the instance of the appellees therein at that time and with the consent of said administrator, and no further proceedings have since been had in the same; that plaintiffs and the said Eliza O'Brien, of Ireland, and said James Hanrick have acquiesced in the proceedings taken by the said Edward G. Hanrick, administrator as aforesaid, in effecting the said compromise with the said Baker, Jones, Gresham, and Lane, and in his abandonment of said cause in said Supreme Court of the United States, whereby said compromises have been made binding on plaintiffs, and plaintiffs have elected and do hereby elect to acquiesce in and ratify the same as well as said compromise effected with the said Cavit.

31. That by reason of the said Ed. G. Hanrick's being administrator of the estate of the said deceased Edward, and of having in his possession all the latter's papers and effects, and of his being then and there in possession of the land allowed to him in said compromise, as was in truth the fact, and by reason of the fact that his cotenants were all non-residents of the State, he, the said Ed. G. Hanrick, had superior means of information at his command as to the value of said Chambers' title and greater advantages for acquiring the same over his cotenants; that no other consideration for said conveyance acquired by the said Ed. G. Hanrick as aforesaid in his own name was given by said Lane except such as has been hereinbefore shown.

That the title of the said Edward Hanrick, deceased, to the lands
embraced in said conflict was a superior title to that of said T.
65 J. Chambers or any of the defendants in said suit No. —,
and that had the same been prosecuted to the end the result
would, in all probability, have been favorable to said Ed. G. Hanrick as such administrator.

32. That said E. G. Hanrick had, at divers times prior to the institution of this suit, selected certain specific portions of said tracts

of land described in Exhibit A for his own sole and exclusive use and benefit, and has wholly appropriated the same for his sole and exclusive use and benefit, and has thereby attempted to effect and has in fact effected a partial partition of the same between himself and his said coheirs and cotenants, and has sold and conveyed the same to the persons named in Exhibits K and L, hereto attached and made a part of this petition, at the divers times shown therein, the tracts of land thus selected and appropriated by the said Ed. G. Hanrick being situated on that part of the lands described in said Exhibit A which is not included in any portion of the same disposed of by E. G. Hanrick in compromise as hereinbefore detailed.

33. That plaintiffs have acquiesced in the selection, appropriation, use, and disposition of said tracts of land referred to next above made by the said E. G. Hanrick, and have consented to the same and the partial partition of the lands described in Exhibit A therefrom resulting, and have refrained from disturbing the possessions of the parties who have as aforesaid purchased or contracted to purchase from the said Ed. G. Hanrick said tracts of land by suit or otherwise, plaintiffs having refrained from making them parties to this suit at the time of the institution of the same, plaintiffs thus having then and at all times elected to acquiesce in the selection and appropriation of said tracts by defendant E. G. Hanrick,
and the partial partition of said estate therefrom result- and
66 being thus produced by said defendants, E. G. Hanrick and
E. J. Gurley.

34. That by the terms of said conveyances last referred to the said E. G. Hanrick, in some instance being joined by said E. J. Gurley, has attempted in each and every instance to convey to said parties named in said Exhibits K and L the whole and entire title of which the said Edward Hanrick died seized in and to the tracts of land so conveyed, using in the deeds of conveyance to such purchasers words purporting to convey such entire and undivided interest and describing the lands therein conveyed by metes and bounds; that at the time of making said conveyances he represented to the world at large and to the grantees named in said Exhibits K and L in particular that he was the sole heir of the said Edward Hanrick, deceased, and that he could convey and did convey to said grantees all the right, title, and interest of which the said Edward Hanrick died seized in and to said tracts of land; that said grantees, believing said representations and relying on the same, were induced to purchase by means thereof and did purchase said tracts of land in good faith, with the understanding and belief that they were acquiring by said purchase the entire title of which the said Edward died seized in and to the same..

35. That the total sum received by E. G. Hanrick from said sales described in said Exhibits K and L, together with interest on the same at the rate of eight per cent. per annum from the 1st day of January of the year next following the date of such sale to the 1st day of July, 1885, is shown and recapitulated in the table set forth in Exhibit M, hereto attached and made a part of this petition, the amount of principal and interest thus received from said

sales by the said E. G. Hanrick and appropriated to his own
67 use and benefit aggregating the sum of $59,129.12.

36. And plaintiffs further represent that said Ed. G. Hanrick had also at divers times anterior to the institution of this suit in the same manner and on the same representations as detailed in the next preceding section selected and appropriated to his own exclusive use and benefit and sold and contracted to sell to divers and sundry persons certain portions of said land last referred to, whose names and the exact quantity of land which he has thus selected and sold or contracted to sell respectively to such persons are to plaintiffs unknown.

37. That the aggregate value of the tracts of land described in said Exhibits K and L and of those sold and contracted to said sundry persons referred to next above are reasonably worth, exclusive of the value of improvements placed thereon since the same were sold and contracted for as aforesaid, the sum of, to wit, $100.00; that when said sales and contracts of sales were made the lands thus sold and contracted for were wild and unimproved lands, and that the price paid and agreed to be paid for said lands was in every instance the reasonable value of the same; that said lands are now in the possession of parties holding the same under title or contract for title from the said Ed. G. Hanrick adversely to plaintiffs.

38. And plaintiffs say, notwithstanding the fact that the said E. J. Gurley and E. G. Hanrick, from the time of the death of Edward Hanrick, deceased, on said — day of ——, 1865, down to the time of the institution of this suit, on the — day of December, 1878, wholly failed to inform plaintiffs or plaintiffs' said father, James Hanrick, or any of the non-resident heirs of the said Edward Hanrick, deceased, of their rights in and to said estate and
lands, although they, the said Hanrick and Gurley, were
68 ever fully informed of the existence of said non-resident
heirs, and notwithstanding the fact that they wholly ignored the same and attempted to appropriate the whole of said lands to their own use and benefit, despite the obligation and duty to acknowledge and protect the interest of said non-resident heirs in said estate which was assumed by said E. G. Hanrick in taking out said letters of administration and making oath to faithfully perform the duties of said administration, and notwithstanding the fact that the said E. G. Hanrick and Gurley have been most bitterly and strenuously opposing in the courts of the country the efforts of plaintiffs to establish their rights to an interest in said lands, and notwithstanding the fact that whatever claim in law or equity the said Gurley and E. G. Hanrick might otherwise have for contribution from plaintiffs by reason of taxes paid on and services rendered by them in the preservation and care of said lands, such claim is now barred by their own bad faith toward their said cotenants as well as by limitations, and notwithstanding the fact that the rights of plaintiffs to an undivided one-third interest in said lands have been established by the decision of the supreme court of the State in the case of Hanrick *vs.* Hanrick, appealed by defendant, E. G. Hanrick, from Williamson county, and notwithstanding the fact that, as shown by

said tabulated statements on page 24 of this petition, defendants Hanrick and Gurley have realized the sum of $81,145.62, principal and interest, from the compromised and sale of lands made by them and described in detail in this petition, plaintiffs nevertheless, in a spirit of concession and compromise, are still willing, as they have been for years past, to give said defendants, Hanrick and Gurley, nearly all of said sum of $81,145.62 by relinquishing all of plaintiffs' claim in and to said lands compromised and sold by defendants, as described in said Exhibits B, D, E, F, G, I, K, L, and
69 M, and also said claim for rents and profits and damages to
timber, and to accept a one-third interest only in that portion of said lands described in said Exhibit A remaining after deducting therefrom, said lands described in said Exhibits B, D, E, F, G, I, K, L, and M, provided said defendants, E. G. Hanrick and Gurley, will account to plaintiffs, either in lands or money, for one-third of the money collected by them since the institution of this suit from the sale of said lands described in said Exhibits K and L, and assign to plaintiffs a one-third interest in the sums still remaining, if any, to be collected from said purchaser of the same, and will within ten days from the filing of this amended petition agree to the entry of a consent decree by shaping their pleadings accordingly, which decree shall provide for the petition of said lands on the basis proposed next above, and shall appoint an auditor to ascertain the amount collected as next above mentioned by said defendants, Hanrick and Gurley, and both of them, and the amount, if any, still due from said purchasers, whose findings shall be conclusive, one-third of the amount thus found by said auditor to be assigned to plaintiffs, the same to be paid them in cash or the equivalent of the same to be assigned them in land in excess of their one-third interest by the commissioners appointed to partition the same, which decree shall also direct said commissioners to partition said lands in such manner that all other tracts of land compromised or sold or contracted to be sold by the said E. G. Hanrick and Gurley or either of them, if any such tracts there be which may come to the knowledge of said commissioners in making said partition and which are not described in said Exhibits B, D, E, F, G, I, K, L, and M, shall fall to and form a portion of the interest allotted to the said E. G. Hanrick and E. J. Gurley, so far as the same can be done without prejudice to the rights of plaintiffs, prefer-
70 ence being given to the earliest tracts conveyed or contracted
to be conveyed, the same to be estimated at the fair, present valuation, regardless of improvements, and plaintiffs do hereby, in good faith, make this tender of compromise, it being distinctly understood that the same will be and is to lapse and be withdrawn without further notice unless said defendants, Hanrick and Gurley, shall, within ten days from the date of the filing of this amendment, accept this offer of compromise by filing such pleadings in the case showing such acceptance as may be necessary in order to make the same binding and effectual.

39. And should said compromise tendered in the section next above not be accepted within the time therein named, as therein

provided, then, in such event, in reference to the partitioning of said lands and in relation to the equities arising from the facts hereinbefore detailed, plaintiffs pray that the defendants E. G. Hanrick and E. J. Gurley be required in their answer to give a full and complete statement, showing—

1. The names of all persons not enumerated in said Exhibits K and L to whom they or either of them have sold lands or contracted to sell the same previous to and since the institution of this suit.

2. A description of each tract of land sold by them or either of them to the persons referred to next above or which they or either have contracted to sell to such persons.

3. The date when such sales and contracts of sales were made respectively; and,

4. The consideration of each, respectively, if money, the amount of the same paid or agreed to be paid in each instance, and date of payments and the amount of the same now due in each instance.

40. And plaintiffs pray that said commissioners be instructed—

1. To divide that portion of said La Serda grant described
71 in said Exhibit A of which the said Edward Hanrick died
seized into two moieties, so that the greater moiety, quality, and quantity of the land considered, and also the estimated value of the tracts conveyed to E. G. Hanrick in said compromises, considered in accordance with the special instructions in reference thereto given below, shall be double the value of the lesser moiety, which lesser moiety shall be assigned to plaintiffs.

2. To divide the same in such manner that the greater in value of said moieties shall include said tracts of land conveyed by said Ed. G. Hanrick to said Cavitt, Baker, Lane, Gresham, and Jones and described in said Exhibits B, D, E, F, G respectively, and also include said tract of land conveyed by said Ed. G. Hanrick to said parties named in Exhibit K, which tracts are therein described.

3. That in making the division the value of the tracts of land conveyed and released to the said Cavitt, Baker, Lane, Gresham, and Jones shall be estimated as being worth the amount received by the said Ed. G. Hanrick in consideration of said compromises, including interest on the same at the rate of eight per cent. per annum from the first day of January next succeeding the date of each of said conveyances to the time when said partition shall be made, and that the value of the tracts described in said Exhibit K be estimated as though the same were wild and unimproved lands, regardless of improvements thereon, and include all of said lands described in Exhibit I.

4. That said larger moiety shall also include the said tracts of land situated in said La Serda grant sold by Ed. G. Hanrick, and which he has contracted to sell, which are not described in said Exhibit K, but which his answer may disclose, as referred to hereinbefore in section —, page —, of this petition, or which may come to
the knowledge of said commissioners, and also be estimated
72 in value as though the same were wild and unimproved
lands, so far as this can be done without prejudice to the

rights of the cotenants of said E. G. Hanrick, preference being given to the tracts conveyed by deeds of earliest date.

5. To divide respectively said league of land in Falls county granted to Rapiel D'Aguirre and that portion of said five leagues granted to said Pedro Zarza of which the said Edward Hanrick died seized, which are described in Exhibit A, each into two moieties, the lesser in value of which to be set aside to complainants, the division also to be made in such manner that the greater moiety shall include the lands sold by Ed. G. Hanrick and described in said Exhibit L, and also include the tracts situated in said grants to Aguirie and Zarza which he sold and contracted to sell previous to the institution of this suit, which are not described in said Exhibit L, but which his answer may disclose, as referred to in section 39, page 22, of this petition, or which may come to the knowledge of said commissioners, the same also to be estimated in value as though the same were wild and unimproved lands, the division to be so made, quantity and quality regarded, that the greater moiety shall be double the value of the lesser, the latter to be assigned to complainants, so far as can be done without prejudice to the rights of plaintiffs or of said E. G. Hanrick's cotenants, preference being given to those tracts conveyed by deeds of earliest date; and plaintiffs pray that such other or different instruction be given said commissioners in the premises and such |other and different relief be granted plaintiffs in regard to the partition of said lands as the nature of the case shall require and as to your honor shall seem meet and equitable under the premises.

H. F. RING,
Attorney for Plaintiffs.

73 (Exhibits omitted.)

Endorsed: No. 1728. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Plaintiffs' seventh amended original petition. Said suit is brought to try title as well as for damages and partition. Filed July 9, 1885. Chas. H. Bartlett, cl'k dist. C., F. C. H. F. Ring, att'y for pl'ffs. Service accepted this 9th day of July, 1885. Goodrich & Clarkson, atty's for E. G. H.

74 *Answer of E. J. Gurley. Filed July* 4, 1887.

In the Dist. Court of Falls County, Texas, Spring Term, 1887.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Now comes E. J. Gurley, one of the def'ts in the above-styled suit, and in replication to pl't'ffs' 7th amended petition, with leave of the court, files his first amended plea and answer as a substitute for his original pleadings, filed — day of ——, 188–, and says:

1. That the matters and things alleged by pl'ffs in their petition are not sufficient in law, as therein set forth, for them to have and maintain this suit against this def't. Wherefore he prays the judge-

ment of the court that he be dismissed with his costs in this behalf expended.

2. And for plea in this behalf this def't denies all and singular the allegations contained in said petition, and says that he is not guilty of the wrongs and injuries complained of; and of this he puts himself upon the country.

3. And this def't further says pl't'ffs' claim, if any they ever had, is a stale demand and has long since been barred by their laches by lapse of time before their claim was asserted by their acquiescence in and recognition of this def't's claim and title and by prescription, as shown by the facts hereinafter stated.

4. This def't, further pleading, adopts the pleas and demurrers, general and special, of his codef't, E. G. Hanrick, and also his answer in general, so far as the same is not inconsistent with the answer of this def't and so far as it is applicable to the de-
75 fence herein made and to the relief herein applied for; and he asks that they be thus far considered by the court as the pleadings of this def't, together with the exhibits hereto attached.

5. This def't further says that in filing this substitute for his former pleadings he does not wa-ve or abandon the force and effect of his original pleas and answer in reconvention or recognize as valid and binding any attempt either by pl't'ffs or def'ts or any of them by amendment or otherwise to leave out of his case any parties in interest or any portions of the land that belonged to the estate of Edward Hanrick, deceased, that were involved at the time his said original pleading- were filed herein. On the contrary, he impleads now, as he did in his original pleadings, all the parties, both pl't'ff and codef't, then and now in this suit and claim- against them all now as he did then; that he is the owner in fee of one-third of the Antanacio de la Serda, Pedro Zarza, and Rapheal de Aguirrie tracts of land, which belong to the estate of Ed. Hanrick, deceased, and which are fully described in the pleadings and exhibits on file in this case, or one-third of so much of said land as may be shown by proof to belong to the said estate of Edward Hanrick, deceased, and that he have a judgement for his said one-third interest, and that it be set apart to him in partition in this case.

6. That said Edward G. Hanrick, one of the def'ts in this case, being, as all the parties to this suit admit, one of the heirs of Edward Hanrick, deceased, and as such heir entitled to one-third of his estate, did on the 24th day of May, 1871, for a valuable consideration make, execute, and deliver to this def't an absolute deed in fee conveying to him an undivided one-third of the said La
76 Serda, Zarza, and Aguirrie tracts of land which belong to the estate of said Edward Hanrick, deceased, which said deed is of record in Falls county, Texas, and is herewith filed as a part of this answer; that the said E. G. Hanrick does not dispute the validity of said deed, and the pl't'ffs and def'ts in this suit, claiming as they do only the remaining two-thirds of said land, cannot be heard to dispute it, since it does not convey or purport to convey any right, title, or interest claimed by them; that said deed vests in this def't's a good, valid, and perfect title to his said one-third inter-

est in said lands as against pl't'ff-, def't, and everybody else. Wherefore he asks the judgment of this court for his said one-third interest in said land, and that it be partitioned to him.

7. That he and those whose estate he has and holds to his said interest in said lands above mentioned have had and held the peaceable, continuous, and uninterrupted and adverse actual possession thereof, claiming the same under title and color of title by a regular chain of transfers from or under the sovereignty of the soil down to him for three years and more next before this suit was brought against him. Wherefore the claims of pl't'ff- and codef'ts are forever barred; and this he is ready to verify.

8. That he and those whose estate he has and holds to his said one-third interest in said lands, have had & held the peaceable, continuous, uninterrupted, and actual adverse possession hereof, cultivating, using, and enjoying the same for ten years and more next before this suit was brought against him. Wherefore the claims of pl't'ffs and codef't, if any they had, are forever barred; and this he is ready to verify.

77 9. This def't, further answering, says that he was employed in the summer of 1858 by Edward Hanrick, who resided in Montgomery, Alabama, to act as his att'y and agent to take charge of, protect, prosecute, and defend his interest, rights, titles, and claims to all his lands in the State of Texas. In the fall of 1858 said Edward Hanrick, deceased, came to Texas and in person put this def't in actual possession of his lands and delivered to him the title deeds for the same and authorized him to institute, prosecute, and defend all suits necessary to perfect his titles, which were then all in dispute. He at that time agreed to give this def't an interest in said lands for his services, and authorized him to improve and hold in his own right so much of the Zarza five-league tract as he wanted for farming and grazing purposes. At that time Wm. G Hale, who resides in Galveston, Texas, was also acting as said Hanrick's att'y and had charge of several suits in the Federal courts at Galveston and Austin involving said Hanrick'- land.

10. That during the first year after this def't was thus employed a number of new suits were brought by and against said Edward Hanrick involving the title to his lands, and this business so increased that this def't was compelled to abandon his general practice, which was then valuable to him, and to devote the greater part of his time to said Hanrick's business. In 1859 this def't told said Edward Hanrick that, Mr. Hale not being present except at the trials of his cases and frequently not then, this def't could not possibly perform the services necessary to secure his rights without assistance; urged him to employ Hancock & West, of Austin. This he agreed to do, and they were employed by him in 1860. The att'ys thus associated agreed amongst themselves to charge
78 as their fee one-third of all the lands they recovered for said
Hanrick and $6,000 in money, and Mr. Hale agreed to negotiate with said Hanrick for said fee. In Dec., 1860, Mr. Hale met said Henrick in Washington city, and it was then agreed between

them that said Hanrick would pay his said att'ys the fee above named, and that he would come to Texas the next spring and sign a contract to that effect. He come as he had agreed to do, and John Hancock, of the firm of Hancock and West, wrote out the said contract as above stated, and said Hanrick, Hancock and West, and this def't signed the same and forwarded it to Mr. Hale for his signature and safe keeping.

11. That from and after the year 1858 up to the death of Edward Hanrick, in 1865, a period of six or seven years, the said Hale, Hancock and West, and this def't did and performed valuable services for said Hanrick under the said contract by prosecuting and defending many suits touching said lands and protecting said Hanrick's interest in the same, for which services the said Hanrick never paid them anything whatever, either in land or money; that these said services were reasonably worth up to that time the sum of forty thousand dollars, and they justly owned that amount of interest in the said lands under said contract, and as security to them they had in their actual possession the said lands and the title papers to same, coupled with their one-third interest under and their part performance of their said contract with Edward Hanrick, deceased.

12. That after the death of said Edward Hanrick his said att'ys continued in the possession and management of his lands under their contract with him, not knowing certainly who were his
79 heirs or where they lived or whether or not he had left any will. In 1866 Edward G. Hanrick, a nephew of Edward Hanrick, dec'd, come from Alabama, where he lived, to Texas, and claimed to be the owner of said lands as the sole heir of Edward Hanrick, dec'd. He did not have the means to pay and, in fact, did not pay or offer to pay the said att'ys employed as above state-by Edward Hanrick, dec'd, for their services up to that time or any part thereof, but, being satisfied with the ability and energy with which they had managed the litigated interests of the said Edward Hanrick during his lifetime and since his death, he desired them to continue their labors under their contract with said Edward Hanrick and promised them that he, as the heir and legal representative of the said Edward Hanrick, dec'd, would carry out his said contract. Now this def't most solemnly avers that the said att'ys, employed as they were by said Edward Hanrick, dec'd, and claiming one-third interest in his lands and having them in actual possession, would never for a moment have permitted any one claiming as heir of Edward Hanrick to enter upon said lands and take possession thereof or of the title papers thereof or in any manner to control the pending litigation until he or they had either paid them for their services they had rendered or agreed to comply with the contract made by their ancestor, unless they had been compelled to do so by the judgment of some court of competent jurisdiction rendered against them.

13. That after the said Edward G. Hanrick, as sole heir and legal representative of Edward Hanrick, dec'd, agreed to comply with the said contract made by him with his said att'ys, Hancock and West

proposed to transfer all their interest in said fee to this deft. They gave as their reason for this that Edward Hanrick, who was an act-
ive, energetic man and thoroughly posted about his land
80 matters, being dead and Mr. Hale having moved to New Or-
leans, La., the labors of his remaining att'ys in Texas would be greatly increased and would require the entire time of one att'y, and that the fees agreed upon were not sufficient; that this def't was thoroughly conversant with the entire business, and for the entire fees he could afford to give his entire time and energy to it. This proposition was accepted by this def't, and the said E. G. Hanrick, being present, agreed to the arrangement and that he would, as sole heir and legal representative of Edward Hanrick, dec'd, convey the said interest of said Hancock and West to this def't.

14. That afterwards Wm. G. Hale, who then lived in New Orleans, La., came to Texas to attend the trial of some of the Hanrick cases, and, being informed of the arrangements made with Hancock and West, consented to the same and expressed himself well pleased to learn that this def't was giving his entire time and interest to the Hanrick interest, and he proposed that this def't should take his interest in the fee also and pay him in money for his services in the past and in the future; that he would take charge of all cases then and thereafter in the U. S. Supreme Court and assist this de't in all trials of cases in the Federal State courts in Texas. This proposition was also accepted by this def't and agreed to by the said E. G. Hanrick, who then promised to transfer said Hale's interest in said fees to this def't. This def't then paid said Hale the two thousand dollars due him on the said contract with Edward Hanrick, dec'd, and also fifteen hundred dollars for attending to the case in the U. S. Supreme Court involving the Zarza title, and agreed to pay him $5,000 to attend to the two cases in said court involving the La Serda title, and a reasonable fee in money for all other serv-
ices he might render touching the said Hanrick's land.

81 This def't, then feeling the labors and responsibilities of
this business to be a heavy burden upon him, made an effort to employ Hon. Geo. Moore to assist him, and offered to share equally with him the fees and the responsibility. This proposition the said Moore declined upon the grounds that the fee was inadequate in view of the immense amount and complicated character of the litigation. The def't then employed Maj. Wm. Walton, of Austin, one of the best and most energetic lawyers in Texas, to assist him in the case in the Federal court at Austin. Since then he has employed the said Walton in about one hundred other cases in the various courts of Texas in which the Hanrick titles were involved. He employed D. G. Smith as local att'y and agent at Georgetown. He also employed S. F. W. Chandler and Smith and Blackborn, of Austin, to assist him in the trial of said cases in the Federal court at Austin, and Thos. Williams, of Marlin, to act as local att'y and agent in Falls county, and Goodrich and Clarkson, also of Marlin, to assist him generally in the Hanrick business.

That in 1867 the said Edward G. Hanrick took out letters of administration upon the estate of said Edward Hanrick in Falls county,

Texas, and reported the said lands of said estate to be all in litiga-
tion and in the possession and control of the said att'ys, employed
by said Edward Hanrick, dec'd, as before stated. He also revived
all suits which were pending at the death of the said Edward Han-
rick in his own name, as sole heir and administrator, and thence-
forward to the present time he has continued *to the present time he
has continued* to manage the estate of the said Edward Hanrick,
dec'd, in his own right, as sole heir, subject to the contract made by
the said Edward Hanrick, dec'd, with his said att'ys, and to their
possession of said lands delivered by him to them in his
82 lifetime as above stated; that in compliance with the said
contract made by Edward Hanrick, dec'd, with his said att'ys
that in view of his own agreement to carry out the same and of the
transfers by Hancock and West and Wm. G. Hale of their interest
in their fees to this def't as aforesaid and in consideration of the pro-
fessional services rendered to Edward Hanrick during his lifetime
and subsequent to his death to this estate and to be rendered there-
after by this def't, the said Edward G. Hanrick did, on the 24th
day of May, 1871, make, execute, and deliver to this def't an abso-
lute deed in fee simple to an undivided one-third of the said lands
as already stated, and he, as administrator of said estate, and this
def't did at the same time enter into a written contract specifying
the services to be thereafter rendered by this def't in part considera-
tion for the said deed which said contract is herewith filed and
made a part of this answer; that the services of this def't as pro-
vided for in said contract were necessary to the preservation of said
estate, and said contract had been strictly complied with by both
the parties thereto; that said administration as alleged by pl'tffs
has long since been closed, the same having been suffered to lapse
because of the fact that there were no debts against said estate ex-
cept the said att'ys fees, which were provided for as above stated,
and no one disputed the claim of Edward G. Hanrick to be sole heir,
and the business of the estate, it was found, could be attended to by
him in that capacity more advantageously and with less expenses
than as administrator.

That the records of said administration have been burned in part
and it cannot, under the law, now be reopened, wherefore this def't
says that Edward G. Hanrick, by making the said absolute
83 and perfect title to this def't to one-third of said lands, paid
him in full for all professional services rendered to Edward
Hanrick in his lifetime and to his estate since his death, and that it
is a just and legal charge against the estate in favor of said Ed. G.
Hanrick, and the said administration being closed as aforesaid, the
same should be adjudged to him by this court.

17. That since 1858 up to the present time this def't has labored faithfully and continuously to protect the said Hanrick's interest. He, as agent, has had many and serious difficulties with trespassers, and has on several occasions protected the timber on said lands and stood off adverse claimants at great personal risk; that his most difficult, annoying, and dangerous duties resulted from this agency upon the land, and there is no record of the same. He has with

force and arms and at great bodily peril prevented adverse claimants from settling upon said land, and with like force and arms forced them to move from said lands after they had made illegal and secret settlements upon the same; that he has had to contend with large organized bodies of men who openly and defiantly resisted the execution of writs of possession in the hands of U. S. marshals and sheriffs, burned down the houses and fences and forcible drove off of said lands tenants put there by this def't under the authority of writs of possession, and time and again threatened the life of this def't. Midst all this and many similar difficulties this def't has steadfastly performed his duties as agent for said Edward Hanrick, deceased, for his estate for nearly thirty years.

18. That as att'y for said Hanrick and his estate this def't has brought and caused to be brought and defended about one hundred and thirty suits involving the titles and the possession of 84 the said Hanrick's lands. The records of these cases are to be found in the district courts at Marlin, Waco, Cameron, Belton, Georgetown, Austin, and San Antonio and in the supreme courts at Austin, Tyler and Galveston and in the Federal courts at Galveston and Austin and in the Supreme Court of the United States. In these cases this def't and his associate counsel have had to meet and contend with many of the best lawyers ever in this State, such as T. J. Chambers, Geo. Pascal, John Hancock, E. M. Pease, Chas. West, Alex. Green, Alexander Mussina, Shelly Chandler, Geo. Moore, Terrell, Fisher, Hughes, Jack Evans, Shelly, MacFarland, Jackson, and ten or fifteen others, many of the cases continued through numbers of years, and several of them went to the supreme court of the State and of the United States. They all or nearly involved the validity of the Spanish title by which said lands were held, and it became necessary that this def't acquaint*ed* himself with the Spanish language and the Spanish and Mexican laws, and to the study of these he devoted several years in order to fit himself for the performance of his duty to the said Hanrick's interest; that he gave up a large and lucrative practice in order to devote his entire time to this business and it is due to his long-continued, persistant, and laborious efforts that the lands here sought to be partitioned were saved to the estate of said Edward Hanrick, dec'd; that the said one-third interest in said lands conveyed to this def't *by this def't* by E. G. Hanrick is all that he has ever rec'd for his services and for the services of his associate counsel, who were employed and paid by him, and that said one-third is a reasonable fee for the services rendered.

19. That the said Edward Hanrick in Oct. or Nov., 1858, put this def't in the possession of his said lands as before stated, and 85 agreed to give him an interest therein, which said interest afterwards was definitly fixed at one-third as stated above; that from that time down to the present this def't has had and held the continuous possession of lands since 1859, and has claimed an interest in the same of one-third; that his claim and possession has been a matter of public and general notoriety. He has paid and obliged himself to pay all att'y fees out of his own means, and as

the owner of said one-third he paid one-third of all taxes and other expenses on said land; that during the lifetime of said Edward Hanrick this def't with his consent and claiming as aforesaid one-third of said lands for himself and his associate counsel made large and valuable improvements thereon in his own right, using and enjoying the proceeds thereof. Wherefore this def't says that by virtue of his said agreement with said Edward Hanrick, dec'd, and his part performance of same, of his actual possession, improvements, payment of taxes, and att'y fees, and claim of ownership, he had and held an equitabl*y* title to his one-third interest at the death of said Edward Hanrick, good and valid against his heirs, independent of any writtten contract with Edward Hanrick, deceased, and that Edward G. Hanrick in making him a deed to the same only did what the heirs of the said Edward Hanrick were bound by law to do; that therefore this def't's one-third interest is a just and legal charge against the estate of said Edward Hanrick in favor of said Edward G. Hanrick, who, as sole owner of said estate, conveyed the said one-third thereof to this def't in his own name.

20. That the individual services of this def't rendered as aforesaid to Edward Hanrick, deceased, in his lifetime and to his estate since his death have been worth five thousand dollars per annum or the aggregate value of one hundred and forty thousand 86 dollars; that this defendant has out of his own means paid Wm. M. Walton $45,000, Wm. G. Hale $3,500, Duncan G. Smith $2,500, Fred. Chandler $1,000, Smith and Blackburn $300, and has agreed to pay Goodrich & Clarkson for their services, which will probably amount to $25,000, making an aggregate of att'ys' fees of $217,300. He has also paid one-third of all the taxes upon said land since the death of said Edward Hanrick and one-third of all court costs and other expenses, as shown by Exhibit — attached to the answer of E. G. Hanrick in this suit, making a total aggregate of ——, all which said amounts the said E. G. Hanrick fully paid and discharged by the execution of his said deed to one-third of said lands to this def't, and by this means he secured for said estate lands which with the increased value to this time and with the improvements thereon are worth about one-half millions of dollars; wherefore this def't says that if the said one-third of said deeded — as aforesaid to this def't by said E. G. Hanrick be not a charge in his said Hanrick's favor against said estate, then he is legally and equitably to recover from said estate the above amounts of money and has and holds a lien upon said lands for the same; and this def't further says if by any ruling or judgement in this case his title to one-third of said lands is annulled in whole or in part, then he claims the said above specified sums of money for his professional service & for amounts paid by him to other att'ys for their services and for costs, taxes, and other expenses paid by him for said estate, and that he be allowed by the court to continue his possession of said land until the same is paid, and that he have execution there- 87 for and an order of the court that said lands be sold to satisfy the same; and he further says that these expenses were necessary to the preservation of said lands to said estate, and that

the amounts paid for professional services as stated were reasonable and just, and that all said sums of money are just and legal charges upon said estate and are a lien upon the land thereof.

21. That the said deed from E. G. Hanrick conveying the one-third of said land to this def't was made by said Hanrick and recorded by this def't before there was any other claim asserted to said estate, and when the said Hanrick claimed to be the sole owner thereof was open, notorious, and undisputed, and was made and received in good faith, believing him to be the only heir and sole owner of said land; that the pl't'ffs and def'ts herein impleaded, except E. G. Hanrick, were knowing of this def't's title to one-third of said land, of the professional services being rendered for the payment of said sum of money, of his possession and acts of ownership, having never until this def't was sued herein in any manner disputed his claim to said one-third of said land, nor have they in any manner assisted in carrying out the expensive and troublesome litigation against the adverse claimants to said lands or paid any taxes thereon or asserted any claim adverse to the claim of this def't and in all his acts of ownership up to the time he was sued herein and since then up to the present time they have recognized and do now recognize this defendant as the att'y of the said estate and are seeking in this case to avail themselves of the result of his labors without paying anything for the same. They have during the same time acquiesced in the management of said estate by said E. G. Hanrick, and in this suit they recognize his sales of said land or portions thereof and all his compromises with adverse
88 claimants; wherefore this def't says that their claim as against him and against Edward G. Hanrick is a stale demand and by their laches, by lapse of time, by prescription, and by their acquiescence they are barred and forever estopped from contesting any act done by either this def't or the said E. G. Hanrick before the institution of this suit.

22. That the pl't'ffs, who represent the one-third interest in said estate claimed by James Hanrick, and the def't, who represents the one-third interest claimed by Elizabeth Hanrick, well knowing of their relationship to Edward Hanrick, deceased, and of his death in 1865, and knowing of the litigation in which the lands were involved, and that at the then low price of said lands they were of but little of any value, they asserted no claim as heirs to said estate; that the lands were worth at the time Edward G. Hanrick took the control and management of the same and made said deed to this def't not more than one dollar per acre, or about $75,000 in the aggregate; that the money paid by this def't to other att'ys and for taxes, costs, etc., amounted to more than said lands recovered for the estate were then worth, and but for the increased value thereof by the titles being cleared up by this def't and by the country becoming settled, this def't would have lost money by his labors upon said lands and his 28 years of time spent thereon; that the said lands by 1877 had become very valuable and worth from five to ten dollars per acre, and the title to a large and valuable part of them had become settled and said lands were in good demand; that

then, to wit, about 1877, said pl't'ffs and def'ts asserted their claim
to said lands and refused to pay any part of the expenses of the
said litigation. They were willing to allow E. G. Hanrick
89 his one-third interest, but claimed that he should pay all ex-
penses up to that time and all att'ys' fees, even knowing that
said Hanrick had already deeded the one-third which they pro-
posed to allow him to this def't in payment for the said att'ys' fees,
and that he had paid out many thousands of dollars for other ex-
penses and for improvements made by him on said land. They
thus presented to the said E. G. Hanrick the alternative either to
give up to them all of said lands which he had not already deeded
to this def't and the twenty years' care, labor, and attention he had
given them and the money he had expended on them, or to resist
their demands in the courts of the country. They also utterly re-
pudiated the claims of this def't and ignored his title to said one-
third interest in said lands. This def't informed them before they
instituted any suit, or very soon thereafter, that he had been em-
ployed by Edward Hanrick in his lifetime as his attorney, and that
he had since then been acting as att'y for the estate, and that he
preferred occupying that position and taking no part in the litiga-
tion amongst those claiming as heirs, and that if they would rec-
ognize him as such att'y and recognize his interest in said lands
and not involve said interest in litigation, he would take no part in
their contests, but continue to manage the lands to the best interest
of the heirs, whosoever they might be. They refused to do this and
thus forced upon this def't this vexatious litigation; that the said
Edward G. Hanrick, then acting under the advice of counsel, re-
sisted their claim and this def't accepted a fee from him which he
had before declined; that the said pl't'ffs and def'ts have never
since then modified their demands, but reasserted them in all their
pleadings and propositions.
90 This court will see, from the propositions they make for a
settlement of this case in their pleadings, their claims are
correctly stated by this def't; and now they complain that said Han-
rick refused to admit them into a joint possession of their joint in-
terests in said lands, and that this def't is aiding and abetting in
his acts, and that thereby we have forfeited the right given by law
to joint owners; that by contending for our rights we have forfeited
them. Now this def't claims the right to hold possession of said
lands until his fees are settled and his one-third interest is recog-
nized and says that the possession or occupation of said lands by
the said pl't'ffs and def'ts, refusing as they do to recognize his claim,
would be adverse possession and would injuriously effect his inter-
est, and he refuses to recognize them as joint tenants because they
do not recognize but deny that he has any interest.

23. That since the said Edward G. Hanrick has had the control of
said estate he and this def't have been in joint possession of saidf
land, the said Edward G. Hanrick claiming two-thirds interest and
this def't a one-third interest therein, and they have in that ratio
paid all taxes, court costs, and other expenses except att'ys' fees,
which have all been paid by this def't; that until after this suit

was brought all deeds were made by Edward G. Hanrick alone and the business was transacted generally in his name. There being none up to that time disputing the claims of either said Hanrick or this def't, it was not considered necessary to use the name of this def't; that this def't has never claimed more than his said one-third interest in said lands or in the rents, profits, and proceeds
91 thereof, nor has he ever sold any timber grown upon said
lands, and neither pl't'ff- -or def't — any of them have any just demands against him for appropriating for his own use more than his said one-third interest in said lands or the proceeds thereof, nor has this def't any claims against the estate of Edward Hanrick other or further than he have a fair & just partition of his said one-third interest. He and the att'ys employed and paid by him have done the work necessary to save these lands to the said estate, and E. G. Hanrick has paid for said work according to his contract and the contract of Edward Hanrick, deceased, and it is a question of contribution amongst the heirs of said estate whether he shall pay all the expenses of said estate or whether it shall be shared *pro rata* amongst the heirs. This def't claims one-third of all the lands of said estate that have not been conveyed by the said E. G. Hanrick, as shown by exhibits and pleas filed by him in this case, and that he have the same set apart to him in partition.

24. This def't further says that Wm. Brady, one of the def'ts herein, is owner by purchase from the heirs of Edward Hanrick of an undivided interest in all the lands of said estate; that since this suit was brought he has sold and conveyed a large po-tion of the said Aguirrie 10 leagues of land which belonged to the estate of the said Edward Hanrick to various parties by *meets* and bounds, and has executed to them deeds specially warranting their title against those claiming under Edward G. Hanrick, deceased. An exhibit of said sales is attached to the answer of E. G. Hanrick & is here referred to as a part of this answer; that the purchasers of said lands have paid to said Brady the purchase-money for the same, and have made valuable improvements thereon, as they claim, in good
92 faith, and now this def't asks that the said purchasers be
made parties to this suit and that the interest of this def't in the lands sold to them respectively by the said Brady be protected by the court; that said lands be set apart to the said Brady, and that this def't have other lands belonging to the estate of Edward Hanrick equal in value to his interest in the same set apart to him. The said lands thus sold by the said Brady are the choice lands of said estate, and are worth $20 per acre.

25. That the balance of the said Aguirrie ten leagues of land is claimed and held by various persons adversely to all the parties to this suit; that this def't, Wm. N. Walton, and Goodrich & Clarkson have from 8 to 10 years been prosecuting suits against said adverse claimants in order to establish the Aguirrie title, under which Edward Hanrick claimed said land; that several of said suits have been filed and appealed to the Supreme Court, and it is probable that it will take a great many years yet to settle up all these claims and to determine what amount of land, if any, belongs to the said

estate of Edward Hanrick. The said lands cannot, therefore, be partitioned in this suit, but must remain for further distribution when the titles are cleared up.

26. That, as already in part stated above, the said Edward Hanrick, deceased, in 1858 agreed to give to this def't an interest in his land in payment for professional services, which said interest became afterwards definitely fixed at one-third, as above stated; that at that time he authorized the def't to appropriate to his own use so much of the Pedro Zarza five leagues west of the River Brazos as he wanted for farming and grazing purposes, and promised this def't that he would make a deed to the same; that this def't then in good faith began to improve said lands in his own right, and at
the death of said Edward Hanrick he had a farm on said
93 land and, with his knowledge and consent, was appropriating
to his own use the proceeds thereof and claiming the same
in his own right; that after the death of the said Hanrick, with the knowledge and consent of the said Edward G. Hanrick, who had the sole control of said estate as administrator and only heir, this def't, without any knowledge whatever of any claim of heirship adverse to the claim of E. G. Hanrick, continued to improve said land in good faith and has continued so to improve same to the present time, using and enjoying the proceeds thereof in his own right and exercising all usual and customary acts of ownership over the same and paying the taxes thereon, etc.; that in 1860 this def't bought and paid for, in his own right and with his own means, all that po-tion of the Neil league lying upon that part of the said Zarza land that he had thus improved and appropriated to his own use, the amount of said conflict being about two thousand acres; that the land thus held by this def't in his own right is bounded by the Brazos river on the east, by the north line of the Zarza on the north, by the Port Sullivan road on the west, and by Big branch & the south line of the Zarza and Rubel line on the south, and comprising in said limits about 5,000 acres; that this def't has at great expense cleared up and fenced in about 1,000 acres of said land and built many dwellings and outhouses and erected thereon a steam-engine gin, press, and mill, and has established a stock ranch thereon, with the necessary sheds and fixtures, and has dug tanks for watering purposes about on different parts of said land, and that the aggregate value of said improvements is $30,000; that this def't has a deed to said land from E. G. Hanrick by metes and bounds in addition to the said deed from him to an undivided one-third interest; that this def't has had and held in his own right
and title the peaceable, continuous, uninterrupted, actual,
94 adverse, and exclusive possession of the said land by metes
and bounds, as above stated, cultivating, using, and enjoying
the same, for ten years and more next before this suit was brought against him.

27. That this def't and E. G. Hanrick, as joint tenants, together improved about 5,000 acres of land bounded on the north by the said Port Sullivan road and the Wooly tract, on the *north* by the said Wooly tract and the north line of the Zarza, and on the south

and west by various small tracts of land, the same being actually occupied by the said E. G. Hanrick & known as the Hanrick farm; that the improvements put upon said land consisted of fences, houses, tanks, wells, and cleared land and are worth $30,000; that said Hanrick and this def't improved said land in good faith and before any adverse claim of heirship was asserted by pl't'ffs and def'ts, believing *that* the said Hanrick to be sole heir to said estate.

28. Now this def't claims that the first-described tract of land be set apart to this def't in partition by metes and bounds, and that the last-described tracts shall be set apart to said E. G. Hanrick and this def't jointly, because he says the value of the said lands is not equal to their shares and can be thus set apart without injury to any other of the parties claiming an interest in said lands, there being enough thereof besides these two tracts to satisfy all the claims of the said pl't'ffs and def'ts, and because all their claims to the first-described tract are barred by limitation as aforesaid, and because of the bad faith of the pl't'ffs and def'ts in this, that they and those under whom they claim knew of the death of Edward Hanrick within five years after it occurred and of their relationship to him and for 12 years failed and neglected to assert any claim to his estate, but permitted and acquiesced in the making of said
95 improvements by said Edward Hanrick and this def't in their own right and now claim the benefit of their said labor and expenditures without any offer of recompense thereof.

29. Now this def't prays the judgment of this court for his said one-third interest in all the said lands as above described, and that it be so set apart to him in partition as to include the said lands improved by him as aforesaid, and that all the land sold by the pl't'ffs and def'ts who claim to own the Elizabeth and James Hanrick interest out of the Aguirrie 10 leagues be set apart to them, and that this def't have other lands to the full amount in value of his one-third interest in the same, as above stated, or that he have judgment for $250,000 for his services and for money paid by him, as before stated, and that he have a judgment for his costs and a writ of possession for his said interest, and that pl't'ffs and def'ts be enjoined from interfering with or in any manner disturbing this def't in his possession, use, and enjoyment of said lands or the proceeds thereof pending in this suit, and for all such other and further relief to which he may be entitled in law or equity *to* the premises; and as in duty bound, etc.

E. J. GURLEY.

Endorsement on back: Filed July 4th, A. D. 1887. C. H. Bartlett, C. D. C., F. Co., by *by* J. W. Bartlett, deputy.

96 THE STATE OF TEXAS, }
McLennan County. }

This memorandum of an agreement by and between Edward G. Hanrick administrator of the estate of Edward Hanrick deceased and E. J. Gurley witnesseth:

That said Edward Hanrick in his lifetime owned eleven leagues of land originally granted to Antonacio De La Serda situated on the left or east bank of the Brazos river, five leagues originally granted to Pedro Zarza on the right or west margin of said river and one league originally granted to Raphael de Aguirrie adjoining said Zarza five leagues on the south side and at the west end thereof all lying in Falls county Texas and ten leagues originally granted to said Rafael D'Aguirie, situated in Williamson county Texas. For full description *to* all which lands reference is made to the original grants and maps thereof archived in the general land office of Texas and the records of the title deeds in said Falls and Williamson counties all which said lands except about four thousand acres belonging to said Edward Hanrick deceased at his death and were then in litigation and they are now under the control and management of said Edward G. Hanrick his administrator and are still litigated by various parties claiming adversely to said Hanrick estate.

That the said E. J. Gurley as an att'y at law and in fact for Edward Hanrick deceased, and for Edward G. Hanrick his adm'r has for fourteen years last past rendered continuous and valuable services in said litigation and otherwise in maintaining and defending said Hanrick title to said lands and for caring for and protecting his interests generally in the State of Texas, for which said services it was understood & agreed between said Gurley and said Hanrick deceased that he the said Gurley should have a part of the above-described lands equal in value to his said services, which he has not received.

97 That the services of the said Gurley are hereby retained by said E. G. Hanrick adm'r in all matters pertaining to the above-described lands and he is hereby made constituted and appointed the true and lawful att'y at law and in fact for the said Edward G. Hanrick adm'r of the estate of Edward Hanrick deceased and as such is authorized and empowered to take and exercise the entire control and management of all controversies and lawsuits touching said lands rendering his personal services whenever necessary and employing all necessary counsel to aid and assist him and in said Edward G. Hanrick's name or otherwise under the law and under judicial authority when necessary to sell any part of said lands and to execute conveyances therefor & to apply the proceeds of said sale as required by law and by the terms of this agreement and to do any and all things touching said lands that said Edward G. Handrick could himself do as administrator of said estate.

The said Gurley for and in consideration of the services rendered, the liabilities incurred and payments to be made, as herein before and after set forth shall receive one-third the value of so much of said land as may be secured to the estate of said Edward Hanrick deceased to be paid to him by said Edward G. Hanrick adm'r as aforesaid under the order and direction of the court having jurisdiction of said administration when such order may be necessary and out of the proceeds of sales made by said Edward G. Hanrick as adm'r or as sole heir of Edward Hanrick deceased.

That said Gurley shall pay whatever amount may be due Wm. G. Hale Esq., of New Orleans, Wm. M. Walton, Fred. Chandler, and Robert Smith of Austin, and L. W. Goodrich of Marlin for services rendered the estate of Edward Hanrick deceased in the different suits in which said lands and parts thereof are involved and 98 he shall also pay any and all att'ys' fees hereafter incurred in perfecting the title of said estate to said lands, and he shall pay one-third of all other expenses incurred by said estate since the death of Edward Hanrick deceased and one-third of all expenses hereafter to be incurred touching said lands, as taxes, court costs etc. Said Gurley shall not however be required to pay any part of the adm'r's fees or commissions nor any expenses that are not properly a charge upon said above-described lands.

That all sales of parts of said lands heretofore made by Edward Hanrick dec'd in his lifetime and by Edward G. Hanrick since his death are recognized as valid and the proceeds thereof are to be subject to the terms of this agreement in lieu of the lands. That one-third the value of said land as "used" in this agreement includes one-third the value of rents and profits sales of timber and damages of trespassers.

That each part- to this agreement relinquishes and removes all demands against the other not herein provided for, if any there be.

In testimony of all which we hereto set our hands and seals this the 24th day of May, 1871.

[SEAL.] E. G. HANRICK.
[SEAL.] E. J. GURLEY.

THE STATE OF TEXAS,
County of McLennan.

Before me, O. H. Leland, a notary public in and for said county of McLennan, personally come E. G. Hanrick and E. J. Gurley, to me well known, by whom the foregoing and hereto attached instrument of writing, bearing date May 24th, A. D. 1871, appears to have been executed, and to me acknowledged that they executed 99 the same for all the purposes and considerations therein stated; to all of which I certify by hereto setting my hand officially with the seal of my office, at office, this first day of June, A. D. 1871.

[SEAL.] O. H. LELAND,
Notary Public of McLennan Co.

[Endorsed:] E. G. Hanrick and E. J. Gurley. Agreement. Filed July 4th, A. D. 1887. By C. H. Bartlett, C. D. C., F. Co., by J. W. Bartlett, deputy.

100 THE STATE OF TEXAS,
McLennan County.

This memorandum of an agreement by and between Edward G. Hanrick sole heir of Edward Hanrick deceased and Edward J. Gurley, witnesseth—That for and in consideration of the professional services rendered by said Gurley to said Edward Hanrick deceased and subsequently in the matter of his estate, and of the payment of all att'ys' fees and one-third of other expenses touching the lands hereafter described, which said payments are provided for in an article of agreement of even date herewith between the parties hereto, the said Edward G. Hanrick therein acting as the administrator of Edward Hanrick deceased, to which article of agreement reference is here made, which said payment said Gurley binds himself his heirs and legal representatives, well and truly to make according to terms of said agreement the said Edward G. Hanrick, sole heir as aforesaid of Edward Hanrick deceased, has bargained and sold and by these presents does bargain sell and convey to said Edward J. Gurley the following-described land to wit:

An undivided one-third interest in the following tracts lying and being situated in Falls county Texas. Eleven leagues of land on the left or east bank of the Brazos river including within its bounds the town of Marlin originally granted to the State of Coahuila and Texas to Antonacio de la Serda. Five leagues on the right or west margin of the said River Brazos originally granted to Pedro Zarza and one league adjoining the said five Zarza leagues on the south side thereof, & at the back end thereof originally granted to Raphael de Aguirrie. And also an undivided one-third interest in and to ten leagues lying and being situated in Williamson county Texas, originally granted to Rapheal de Aguirrie. For more full and perfect description of all said land reference is made to the original grants archived in the general land office of the State of 101 Texas at Austin city, to the county maps of said counties of Falls and Williamson on file in the recorder's office of said counties and to the records of deeds and other title papers touching said land in the recorder's office of said counties.

All sales of parts and parcels of said lands heretofore made by Edward Hanrick deceased in his lifetime and by Edward G. Hanrick since his death are hereby recognized as valid and binding and in l*ei*u of the lands thus sold one-third of the proceeds thereof *are* hereby conveyed to said Gurley.

All which said Gurley, his heirs legal representatives and assigns shall have and hold in fee simple forever. And I, the said Hanrick to the said Gurley do forever warrant and defend the title to said lands against the claims of all persons legally claiming the same or any part thereof, by through or under me and no further.

In testimony of all which we both hereto sign our names and affix our seals this the 24th day of May, A. D. 1871.

E. G. HANRICK. [SEAL.]
E. J. GURLEY. [SEAL.]

STATE OF TEXAS,
County of McLennan. }

Before me, O. H. Leland, a notary public in and for said county of McLennan, personally *come* E. G. Hanrick and E. J. Gurley, to me well known, by whom the foregoing and hereto attached instrument of writing, bearing date May 24th, A. D. 1871, appears to have

been executed, and to me acknowledged that they executed the same for all the purposes and considerations therein stated; to all of which I certify by hereto setting my hand officially with the
102 seal of office, at office, this the 1st day of June, A. D. 1871.

O. H. LELAND,
[SEAL.] *Notary Public of McLennan County.*

THE STATE OF TEXAS,
County of Falls.

I, Joe Watkins, clerk of the county court of Falls county, do hereby certify that the foregoing instrument, with its certificate of authentication, was filed for record in my office Sept. 15, 1882, at 2 p. m., & recorded same day in Book R, page- 280 and 281, Falls county record of deeds.

Given under my hand and seal of office this Sept. 15th, 1882.

J. W. WATKINS,
C. C. C., F. Co.,
By C. H. BARTLETT, *D. C.*

Endorsements on back: E. G. Hanrick to E. J. Gurley. Deed. Filed Sept. 15th, 1882, at 2 p. m. J. W. Watkins, clerk, by C. H. Bartlett, D. C. To go with bill No. 4. Filed July 4th, A. D. 1887. C. H. Bartlett, C. D. C., F. Co., by J. W. Bartlett, deputy. Paid by G. & C.

103 In the District Court, Falls County, Texas, July Term, 1887.

NICHOLAS HANRICK *et al.*
vs.
E. C. HANRICK *et al.*

To the Honorable Eugene Williams, judge of said court:

The petition of William Brady, a citizen of the State of New York, residing in the county of New York, in said State, and who *is* also a citizen of the State of New York when he was made a party def't in the above-entitled cause, —:

That heretofore, to wit, on the — day of December, 1878, said suit was instituted by Nicholas Hanrick and others in said dist. court of Falls county, Texas, against E. G. Hanrick, who is now and was then a citizen of said State of Texas, residing in the county of Falls, in said State, for the recovery of an undivided interest in several large bodies of land situated in said county, containing in the aggregate about 70,000 acres.

That from the pleadings of the pl't'ffs in this cause it appears that on the — day of ——, 1865, one Edward Hanrick died intestate seized of said land, leaving as his next of kin and sole heir- two brothers, named respectively John and James Hanrick, and a sister, named Elizabeth O'Brien, and a nephew, E. H. Henrick, defendant- in said cause.

That said Elizabeth O'Brien and said John and James Hanrick were aliens and subjects of the United Kingdom of Great Britain and Ireland.

That the said John Hanrick died intestate on the — day of —— 1871, without issue of body, he never having married.

104 That the said James Hanrick died intestate on the — day of ——, 1875, leaving as his heirs five children, to wit, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, and Catherine O'Neil, and four grandchildren, the children of a deceased daughter, these said heirs of James Hanrick being parties pl't'ffs in this cause.

By subsequent amendment to their pleadings in said cause it was shown by the pl't'ffs that previous to the institution of said suit the said Annie, Ellen, and Nicholas conveyed for trust purposes and without consideration their interest in said lands to one Eliza M. O'Brien by deed in ordinary form reciting an onerous consideration, who, the said Eliza M. O'Brien, held the legal title to their, the said Annie, Ellen, and Nicholas Hanrick's, interest in said lands in her name, a half interest in which title she had conveyed to your petitioner, William Brady, before the institution of this suit.

It was further shown in said amended pleadings that previous to the institution of this suit said Elizabeth O'Brien, of Ireland, conveyed her said interest in said lands to her daughter-in-law, the said Eliza M. O'Brien, who had conveyed a half of said interest to petitioner.

It was also shown there that one Wharton Branch, who is now and was then a citizen of the State of Texas, residing in the county of Galveston, and one John B. Sargent, who is now and was then a citizen of Mass., residing in the county of Suffolk, in said State, claimed to own an undivided interest in all of said lands under said trust conveyance from Nicholas Hanrick to Eliza M. O'Brien, as well as by virtue of certain conveyance to them executed by one Philip O'Brien, as agent and att'y-in-fact of the said John and James Hanrick and Elizabeth O'Brien.

105 It is further shown in said amended pleadings that one E. J. Gurley, who is now and was then a citizen of the State of Texas, residing in the county of McLennan, in said State, claimed to own an undivided interest in all of said lands by virtue of a contract entered into between him and said Edward Hanrick, deceased, during the lifetime of the latter.

The pl't'ff- in this suit, 1728, caused the said Eliza M. O'Brien and her said husband, Philip O'Brien, and said Wharton Branch, John B. Sargent, and E. J. Gurley, as well as your petitioner, William Brady, to be made parties defendant to said suit, and prayed for a partition of said lands, asking that the one-third interest in the same inherited by the said James Hanrick — set aside to them.

Whereupon, on the 26th day of March, 1883, this petitioner, Wm. Brady, together with the said Eliza M. O'Brien, and her said husband, after having been made parties defendant in said suit as aforesaid, voluntarily came into court before process was issued and served on them and entered their appearance in said cause and filed a disclaimer of an interest in said lands under said trust conveyance from Annie and Ellen Hanrick to Eliza M. O'Brien, and on the same day defendant John B. Sargent and said Wharton Branch appeared in said cause and filed their respective answers herein, wherein they claim, as against your petitioner and all the parties to said suit, judgement for an undivided three-fourths of the three-fourths interest in the said land inherited by the said John and James Hanrick and Elizabeth O'Brien, and prayed for a partition.

And the said E. J. Gurley, on or about the same day, filed his answer in said cause, wherein he set up a claim to an undivided one-third interest in all of said lands and interpleaded the
106 same against your petitioner, Wm. Brady, and all of said other parties to said suit, and prayed for judgment establishing in him such one-third interest and for a partition.

That by amended petition filed July 9th, 1885, Wm. E. Kendall, a citizen of the State of Texas, and Duncan Cameron, a citizen of the State of New York, were made parties defendant by this plaintiff, but the said Kendall has never been served with process and never appearing, the said Cameron, however, having entered his appearance in said cause.

That said cause 1728 has never yet been tried on its merits, and that the same is still pending in the court, the parties to the same and the pleadings therein filed being substantially as herein set forth.

Wherefore petitioner says that in this said cause there is a controversy between a citizen of the State ef Texas, in which such suit was brought, and a citizen of another State, who is a def't in said suit, to wit, a controversy between E. J. Gurley, E. G. Hanrick, and Wharton Branch, all citizens of Texas, and your petitioner, Wm. Brady, a citizen of New York and a defendant in said suit. Petitioner further represents that the said E. G. Hanrick, with the advice and assistance of the said E. J. Gurley, before the institution of said suit sold to many and divers people, to wit, one hundred or thereabout, separate and distinct portions of said land to each of said people respectively by deeds of conveyance purporting to vest in such respective purchasers all the title which the said Edward Hanrick died seized in and to the respective tracts of land so sold and described in said deeds; that the prices realized from these sales by the said E. G. Hanrick and E. J. Gurley were the reason-
107 able values of the land so sold; that said sales were made by means of representations made by the said Hanrick and Gurley to the effect that E. G. Hanrick was the sole and legal heir of Edward Hanrick, deceased, the existence of said other heirs being unknown to the public generally in Texas until about the time of the institution of said suit 1728.

That ever since suit was instituted the said Hanrick & Gurley have sold off in the same manner by similar deeds considerable quantities of land on the representations and assurances made by them to the purchasers of the same that said alien heirs were not entitled to any interest, by inheritance or otherwise, in or to the lands pertaining to the estate of Edward Hanrick, deceased, and that the courts of the country would ultimately so decide.

That the aggregate amount of the land thus sold by E. G. Hanrick and E. J. Gurley in Falls county largely exceeds in quantity as well as value the amount to which they will be entitled if a fair partition of said lands be had, and should your petitioner obtain in said partition his fair share of said lands and should the same be set aside to him — would almost necessarily include many of said tracts of land sold as aforesaid by E. G. Hanrick and E. J. Gurley.

That there are now living in said Falls county, Texas, on said tracts of land sold by the said Hanrick and Gurley several hundred people, claiming to be the owners respectively of the same, the validity of whose title depends wholly upon the manner in which said lands will be divided on said partition, the total extinction of the titles of many of them to the tracts held by them being inevitable,
as hereinbefore shown, should your petitioner obtain justice
108 in said suit 1728.

That the said E. G. Hanrick resides in the said county of Falls, having lived there most of the time for the past twenty years; that he has an extensive and influential acquaintance and a large following of friends, servants, and relatives in said county; that his counsel in said cause 1728, L. W. Goodrich and B. B. Clarkson, also reside in the said county, having lived there for the past twenty years; that they live and have their homes on the land in controversy, claiming title to more than a thousand acres of the same under the said E. G. Hanrick, besides having, as your petitioner is informed and believes, a large contingent fee in said suit; that they are men of large pecuniary means, according to petitioner's information and belief, and have great personal influence in said county with the people generally and with the officers of the county.

That owing to the great influence of the said E. G. Hanrick and his said att'ys in said county and to the influence of the several hundred citizens residing on said lands whose titles are je-pordized by the claims of your petitioner and who have a direct personal interest identical with that of the said E. G. Hanrick and E. J. Gurley in defeating the claims of petitioner in, to, or in limiting the quantity of the land awarded to him on partition to the smallest possible amount, as heretofore shown, there exists a local influence and prejudice in said Falls county so strong against petitioner as to prevent him from obtaining justice in this court.

Petitioner further represents that if he should succeed in being able to change the venue of said suits from said Falls county in
accordance with the laws of the State of Texas on account of
109 said local influence the same would be removed to McLen-
nan county, that county being the one whose county-seat i*n*
nearest to the court-house of Falls county.

That the north bound-ry line of the Pedro Zarza grant, the same containing about twenty-two thousand acres and constituting the most valuable portion of the land in controversy, extends many miles within a very short distance of the southern boundary line of said McLennan county; that many of said purchasers from said

E. G. Hanrick live on this grant and do most of their trading with the merchants in McLennan county and have numerous friends and acquaintances in said McLennan county directly adjacent to said grant; that the said E. J. Gurley is himself a resident of said McLennan county, having resided there a great number of years; that — a large and extensive acquaintance in said county and great local influence and *having* a host of devoted friends, admirers, extensive and influential family connection, through whose influence he can and would array against petitioner in said partition proceedings.

That the said E. G. Hanrick also has extensive and influential family connection in said McLennan county; that the said L. W. Goodrich also formerly resided in the said McLennan county and has extensive and influential family connection by marriage in said county as well as former acquaintance and friendship.

That thus there exists also a strong local influence in said McLennan county against petitioner, so great as to prevent him from obtaining justice in that county should the venue of said suit be changed to the same.

Petitioner further represents that the laws of the State of Texas regarding the changes of venue in civil cases, particularly in suits
for land like the one at issue, practically deny a right to a
110 change of venue to a man resident of this State and stranger
in the county in which the suit is pending, since the affidavit of three disinterested and creditable citizens are necessary to secure such change of venue.

That the stronger such local influence or prejudice in such county and the greater the necessity for such change of v*u*nue the greater is the difficulty of finding three creditable citizens of the county and necessarily strangers to the non-resident part who are willing to become involved for the benefit of a total stranger in the ill will engen-ered by a suit for land on which the homes of their own neighbors and friends are situated.

That petitioner is himself a stranger in both Falls and McLennan count*y*, having few acquaintances and no personal friends in either; that he believes and has reason to believe that, notwithstanding the existence of said local influence in both of said counties, it would be impossible for him to find three creditable citizens in either of said counties not directly interested in the result of this suit who would be willing to take sides against the said Hanrick and Gurley and said hundreds of citizens residing on said lands in his favor by making such affidavits, since by such course they would, without the slightest advantage or gain to themselves, surely incur the ill will of scores, if not hundreds, of *his* neighbours and fellow-citizens. Petitioner further represents that since the institution of said suit 1728 and before the right of aliens to inherit in the State of Texas was fully determined by the courts he purchased most of the remaining interest of the said Eliza M. O'Brien,
his said cotenant, in and to said lands and is now the owner
111 of the same, except possibly as to a small fractional interest
claimed by others under her; that tho' he paid for said in-

terest all that the same was worth and more than the value of the same at the time of the said purchases, and though the said Eliza M. O'Brien was fully informed of the value of the said interest and advised by counsel of her own selection as to all her rights in the premises, and tho' petitioner purchased said interest with great reluctance and after having been repeatedly importuned by her and her husband so to do, and tho' such parchase was fairly made in all respects, still such purchaser has subjected himself to unjust criticism and has given rise to reports which have been circulated, so petitioner is informed and believes, in Falls and McLennan count*y* to the effect that he has overreached and swindled her, the said Eliza M. O'Brien, whereby there has been created against him in said counties a local prejudice sufficient of itself alone, according to the best of his belief, to prevent him from obtaining justice in said State court. Petitioner says that he is a broker and operator in Texas securities and real estate by profession, residing in the city of New York, having lived there for the past 14 years; that, as heretofore shown, his title is from aliens; that there exists in all communities of said State of Texas, according to petitioner'- information and belief, — against titles to land derived from aliens and against the policy of the law permitting aliens to take or hold lands; that there also exists in all portions of the State a local prejudice against any one in petitioner's business, particularly like petitioner, a non-resident stranger, who attempts to enforce his legal rights against citizens of the State for the recovery of land held by them, and that this prejudice is so strong, not only in said counties of Falls and McLennan, but in any other county in which said suit could be removed to, if it were 112 possible for him to change the venue of it at all, as to prevent him from obtaining justice in any State court to which it could under any circumstances be removed under the laws of said State; therefore petitioner says that he desires to remove this suit before the trial thereof into the next circuit court of the United States to be held in Waco, in the northern dist. of the State of Texas, in pursuance of the provisions of law as contained in sect. 639 of the Revised Statutes of the United States and in pursuance of the provision of law as contained in an act entitled An act to amend the act of Congress approved March 3rd, 1875, entitled An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes, and to further regulate the jurisdiction of circuit courts of the United States, and for other purposes, approved March third, eighteen — eighty-seven.

And your petitioner says that he has made & filed in the dist. court of Falls county, in said cause, the affidavit required by said a*lw*, which affidavit he prays may be taken as part of this petition.

And your petitioner further respectfully shows that he is ready and willing to give a bond, with good and sufficient securities, for his doing all acts and things required to be done by the said provisions of law upon the removal of a cause into the circuit court of the United States, and he offers and files herewith his bond, executed by —— —— and —— ——, of the county of Harris, State of Texas, as sureties, in the several sum of one thousand dollars, conditioned as the law directs, which said bond has been filed in this cause, and petitioner prays that the same may be taken as a part of this petition. The premises considered, the petitioner 113 prays that — bond may be ac-epted as good and sufficient surety, according to the provision of law, and that the said suit may be removed into the next circuit court of the United States to be held in the northern dist. of Texas, at Waco, pursuant to the statute of the United States in such cases made and provided, and that no further proceedings may be had therein in this court.

And petitioner will ever pray, etc., etc.

WM. BRADY.

J. T. BRADY,
Att'y for Petitioner.

STATE OF TEXAS,
County of Harris.

Wm. Brady, the petitioner in the foregoing petition, deposes and says that he has read the petition subscribed to by him above and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. BRADY.

Subscribed and sworn to before me this the 15th day of June, A. D. 1887.

T. BLAKE DUPREE,
Notary Public, Harris Co., Texas.

Endorsed on back: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Petition for removal to Federal court. Filed July 5th, A. D. 1887. C. H. Bartlett, C. D. C., F. Co., by J. W. Bartlett.

114 In the District Court of Falls County, Texas.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Wm. Brady, being duly sworn, depose*d* and says that he is a citizen of the State of New York and resides in the county and city of New York, in said State, and is one of the def'ts in the above-entitled cause; that said cause was brought in the above-named court on the — day of ——, 1878, and that he, after having been made a party def't by the pl't'ffs, entered his appearance therein on the 20th day of March, 1883; that he has reason to believe and does believe that from prejudice and local influence he will not be able to obtain justice in said dist. court of Falls county or in any other court within the State of Texas to which this def't may under the law of said

State have the right on account of said prejudice and local influence to remove said cause. He therefore makes this affidavit for the purpose of removing said suit into the circuit court of the United States for the northern dist. of Texas, sitting at Waco, in pursuance of the statute in such case made and provided.

WM. BRADY.

Subscribed and sworn to before me this the 15th day of June, A. D. 1887.

[SEAL.] T. BLACK DUPREE,
Notary Public, Harris County, Texas.

Endorsements: 1728. Nicholas Hanrick *et al vs.* E. G. Hanrick *et al.* Affidavit for removal. Filed July 5th, 1887. Chas. H. Bartlett, dist. clerk, Falls Co., Texas.

115 In District Court, Falls County, Texas.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

We, Wm. Brady, as principal, and —— —— and —— —— both of Harris county, Texas, as sureties, *and* jointly and severally held and firmly bound unto E. G. Hanrick and E. J. Gurley, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Thomas Clare, Elizabeth Clare, Catherine O'Neil, Peter Whalen, Mary Whalen, Robert Whalen, and Philip O'Brien, individually and in such representative capacity as he may have as the heir of Eliza M. O'Brien, deceased, who has died since the institution of said suit above named; John B. Sargent, Duncan Cameron, and Wharton Branch, individually and in such representative capacity as he may have as the pretended administrator of the estate of Eliza M. O'Brien, dec'd, and Wm. E. Kendall in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said parties above named as obligees, their successors or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and aministrators, firmly by these presents. The condition of this obligation is such that whereas said suit numbered and styled as above is now pending in the dist. court of Falls county, Texas, and is removable to the circuit court of the United States for the northern dist. of Texas under and by virtue of the provisions of the statutes of the United States as contained in sec. 639 of the Revised Statutes of the same and an act entitled An act to amend the act of Congress approved March third, 1875, entitled An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and
116 other purposes, and to further regulate the jurisdiction of circuit courts of the United States, and for other purposes, approved March 3rd, 1887; and whereas the s-id Wm. Brady has made and filed in the said dist. court of Falls county above named the affidavit required by the provisions of said statutes, and has

filed his petition in said court for the removal of said suit to the said circuit court of the United States: Now, if the above-bounden Wm. Brady or his legal representatives shall enter or cause to be entered in the circuit court of the United States for the northern dist. of Texas, at Waco, on the first day of the stated session next ensuing after the order of the said dist. court of Falls county for the removal of said suits in said circuit —, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit No. 1728, and do or cause to be done such other appropriate acts as by the said provision of said statute referred to are required to be done upon the removal of a suit in the United States court, then the above obligation to be void; otherwise to remain in full force and effect.

In testimony witness our hands this 2nd day of July, 1887.

WM. BRADY.
J. T. BRADY.
H. H. DORLEY.

Approved this July 5th, 1887.

CHAS. H. BARTLETT,
Dist. Clerk, Falls County, Texas.

STATE OF TEXAS,
County of Harris.

I, S. M. Williams, clerk of the dist. court in and for said county, do hereby certify that J. T. Brady and H. H. Dorley, whose names appear signed to the annexed bond, are, in my opinion, good 117 and ample security for the amount therein specified, and that they have property in said county subject to execution of a large amount, and that if said bond was offered to me for approval the same would be accepted and approved.

Witness my hand and seal of office, at Houston, Texas, this 2nd day of July, 1887.

[SEAL.]

S. M. WILLIAMS,
Clerk Dist. Court, Harris County.

Endorsements: 1728. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Bond for removal. Filed July 5th, 1887. C. H. Bartlett, dist. clerk, Falls county, Texas.

Bond examined and approved by me in open court this 5th day of July, 1887.

EUGENE WILLIAMS,
Judge 19th Dist., Texas.

118 *Order of Removal.*

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

On the 5th day of July, A. D. 1887, came one to be heard the above-entitled cause — the def't William Brady'- petition, affidavit, and bond for removal of this suit into the circuit court of the United States for the northern district of Texas, at Waco, and, the same being heard by the court and it appearing to the court that the laws for such cause made and approved have been complied with, it is ordered, adjudged, and decreed by the court that said cause be, and the same is hereby, removed into the circuit court of the United States.

Record- in Book H, Dist. Court Minutes, page 474.

119 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Come the defendants E. G. Hanrick and E. J. Gurley, who join for the purpose of making this motion, and now move this court to remand this suit to the district court of Falls county for the following reasons, viz:

1st. This court has no jurisdiction to hear and determine this cause under the act of March 3rd, 1887, because the court could not take original jurisdiction of said cause.

2nd. The pleadings of the def't Wm. Brady, set out in the records, show no controversy between him and the plaintiffs.

3rd. Because the def't Brady, upon whose petition this cause was removed, is a citizen of the same State as the plaintiffs Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick, viz., of the State of New York, all of which appeared by the record.

4th. Because each and all of the def'ts herein are not citizens of a State different from the pl't'ffs.

5th. Because there is no separable controversy between said def't Brady and any other party in this suit, nor does the petition for re-oval show any such controversey.

6th. Because under the local-prejudice clause of the act of March 3rd, 1887, it is not competent for any defendant in a suit to remove unless the citizenship of all of the def'ts would give the court jurisdiction as between them and all of the plaintiffs.

7th. Because the local-prejudice clause of the act of March 3rd, 1887, is intended by its terms to give a def't who comes within the meaning of said act a trial unaffected by prejudice or local influence, and it must be made to appear that the laws of the State are inadequate before he can invoke the jurisdiction of this court.

120 8th. Because the said petition does not show that the def't Brady could not obtain a trial unaffected by prejudice or local influence by a change of venue under the laws of the State.

9th. Because, under the act of 1875, the application came to- late, & because there is no separable controversy shown by the records.

10th. Because the petitioner, Wm. Brady, although nominally a def't, is not such in fact, and these def'ts aver that his real interest is with the plaintiffs in this suit, and that by various deeds made by the plaintiffs before the institution of this suit and since that date and before the petition for removal was filed the said Wm.

Brady has become vested with most, if not all, of the right and interest claimed by the plaintiffs, and the said Brady is now under the authority of said pl't'ffs prosecuting this suit for his own benefit; all of which appears by the record in connection with certified copies of deeds herewith filed; hence, not being a real defendant, said Brady cannot remove.

11th. And as to the facts stated in said petition for removal as constituting local prejudice these def'ts demur and say the same are insufficient.

12. And these def'ts deny that any local prejudice against said def't Brady and against his claim of title exists, or that this court has jurisdiction of this cause, and pray that eve*di*nce may be heard and the facts established showing want of jurisdiction in this court.

GOODRICH & CLARKSON,
Att'ys for Def'ts.

Endorsed as follows:

Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Motion to remand to State court. Filed Nov. 21, 1887. J. H. Finks, clerk.

121 THE STATE OF NEW YORK,
County of New York.

Know all men by these presents that we, Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick, all of said State, and children and heirs-at-law of James Hanrick, deceased, who was a brother of Edward Hanrick, deceased, late of Montgomery, Alabama, for the porposes and consideration hereinafter expressed, have this day made, constituted, and appointed, and by these presents do make, constitute, and appoint, J. C. Clarke, of said State, and W. C. Belcher and H. F. Ring, of Wood county, Texas, comprising the law firm of Belcher & Ring, our true and lawful agents and attorneys-in-fact for us and in our names, places, and stead to grant, bargain, sell, and convey all our right, title, claims, and interest, both legal and equitable, in and to any and all lands, tenements, and heredit*i*aments within the State of Texas and appertaining to the estate of said Edward Hanrick, deceased, and to which we are entitled as heirs of our father, the said James Hanrick, deceased, and for us and in our names, places, and stead to make, execute, and acknowledge and deliver good and sufficient conveyances for the same; to collect and receipt for rents and damages and for such sums of money as may become due and owing to us by virtue of such sales as our said attorneys may effect to establish, maintain, and defend by or in suits at law or otherwise our right, title, and interest in and to said lands, tenements, and hereditaments; to enter into and agree upon compromises with adverse claimants of the same; to secure for us a fair and equitable division of said lands between ourselves and such other persons *into* may have as heirs under the said Edward Hanrick, deceased, or otherwise a legal and equitable interest in the same, and in furtherance hereof to execute and deliver deeds of partition,

and generally to do and perform jointly all things necessary
122 to be done in the premises as fully and as effectually as we
ourselves could do were we personally present, we hereby ratifying and conforming all the joint acts of our attorneys in the premises, and we do hereby recall and revoke and declare null and void all powers of attorney and deeds for trust purposes heretofore made to other persons by any or either of us in regard to our interest in the lands hereinbefore mentioned; and in consideration of valuable legal services rendered by the said Belcher and Ring and in consideration of costs and expenses to be incurred by the said Belcher and Ring in settling said land, we do hereby convey unto the said Belcher and Ring, their heirs and assigns, an undivided one-half interest in and to said lands or in and to the proceeds arising from the sale of the same, less such interest in said undivided one-half interest as Samuel Zuckerman, of Hood county, Texas, may have in the same against us by virtue of a bond executed by us in favor of the said Samuel Zuckerman on the — of September, A. D. 1878, wherein we agreed upon certain conditions to convey unto the said Samuel Zuckerman the undivided one-half interest herein conveyed to the said Belcher and Ring, it being distinctly understood that all claims which the said Samuel Zuckerman may have against us or against said lands of any nature whatever are to be satisfied out of the said undivided one-half interest herein conveyed to the said Belcher and Ring; the said Belcher and Ring to have only such portion of the said undivided one-half interest, if any, as shall remain after all said claims which the said Samuel Zuckerman may have shall have been formally relinquished to us or to our assigns: Provided further always, that all costs whatever, whether costs of court or otherwise, which have been heretofore incurred or
which may be hereafter incurred, whether in the defense or
123 prosecution of suits at law in our behalf or otherwise, are
to be defrayed out of the undivided one-half interest herein assigned to the said Belcher and Ring, it being distinctly expressed and agreed upon that we are to receive one-half of the gross proceeds arising from the sale of our interest in said lands.

In testimony whereof witness our signatures hereto this the 18th day of February, one thousand eight hundred and seventy-nine.

NICHOLAS HANRICK.
ANNIE HANRICK.
ELLEN HANRICK.

Endorsed: Nicholas Hanrick *et al.* to J. C. Clarke. Certified copy of power of attorney. Filed Nov. 21, 1887. J. H. Finks, clerk.

124 THE STATE OF TEXAS,
County of Falls.

Know all men by these presents that I, H. F. Ring, of said county, did, on the 10th day of July, A. D. 1882, and do by these presents, for a valuable consideration, the receipt of which I hereby acknowledge, grant, bargain, sell, and convey, and have granted, bargained, sold, and conveyed, to Wm. Brady, of New York city, all my right, title, and interest in and to all lands, tenements, & hereditiaments appertaining to or forming any part of the estate of Edward Hanrick, dec'd, within the State of Texas; to have and to hold the same — the said Wm. Brady, his heirs & assigns forever.

In testimony whereof witness my hand this the 20th day of July, A. D. 1882.

H. F. RING.

(Certificate of record omitted.)

125 Annie, Nicholas, and Ellen Hanrick to William Brady. } Deed.

State of New York, }
County of New York. }

Know all men by these presents that we Annie otherwise Honord Hanrick, Nicholas Hanrick and Ellen Hanrick, all of the State of New York and county of New York and being the children and heirs of James Hanrick deceased, who was a brother of Edward Hanrick deceased, late of Montgomery county of Montgomery Alabama.

In consideration of the sum of fifteen hundred dollars cash in hand paid the receipt of which is hereby acknowledged, have this day granted bargained released sold and conveyed and by these presents do grant bargain release and convey unto William Brady of New York all our right title and interest in and to the ten leagues of land more or less situated in Williamson county State of Texas.

The same having been originally granted to Rafel D'Aguirre and being known as the Rafel D'Aguirre grant, to have and hold the same to the said William Brady, his heirs and assigns forever.

Witness our hands in testimony hereof this twenty-third day of ——, A. D. 1884.

ANNIE HANRICK.
NICHOLAS HANRICK.
ELLEN HANRICK.

Signed and delivered in presence of—
DUNCAN CAMERON.
A. B. PHILIPS.

State of New York, }
City and County of New York. }

Filed Nov. 27, 1887.

J. H. FINKS, *Clerk.*

126 Thomas Clare *et als.* to William Brady. } Deed.

United Kingdom of Great Britain and Ireland:

Know all men by these presents that we Elizabeth Clare joined by her husband Thomas Clare, Peter Whelan, Mary Whelan, Eliza Whelan, Bridget Whelan, Robert Whelan all of Wexford county Ireland and Catherine O'Neil of Dublin county Ireland widow of Martin O'Neil late of Dublin county aforesaid deceased who with Annie, Ellen and Nicholas Hanrick of the State of New York United States of America are the sole heirs of James Hanrick in consideration of the sum of (300) three hundred pounds sterling the receipt of which is hereby acknowledged have this day granted bargained sold and conveyed and by these presents do grant bargain sell and convey by way of quitclaim and release unto William Brady of New York United States of America all our right title claim and interest in and to all that certain tract of land situated in Williamson county Texas known as the Rafel D'Aguirre grant the same containing ten leagues of land more or less. To have and hold the same unto the said William Brady his heirs and assigns forever.

Witness our hands in testimony hereof this twenty-third day of January one thousand eight hundred and eighty-four.

ELIZABETH CLARE.
THOMAS CLARE.
PETER WHELAN.
MARY WHELAN.
ELIZA WHELAN.
BRIDGET WHELAN.
ROBERT WHELAN.
CATHERINE O'NEIL.

127 Signed, sealed, and delivered by the above-named Elizabeth Clare, Thomas Clare, Peter Whelan, Mary Whelan, Eliza Whelan, Bridget Whelan, and Robert — in presence of me—

EDWARD CARR,
Public Notary, New Ross.

Signed, sealed, and delivered by the above-named Catherine O'Neil in presence of me—

R. W. BOYLE,
Not. Pub., Dublin.

Before me, Edward Carr, notary public, duly authorized, admitted, and sworn, residing and practicing at New Ross, in the county of Wexford, in that part of the United Kingdom of Great Britain and Ireland called Ireland, on this day personally appeared Elizabeth Clare and her husband, Thomas Clare, known to me to be persons whose names are subscribed to the foregoing instrument, and the said Thomas Clare acknowledged to me that he executed the same for the purpose and consideration therein expressed; and, the said Elizabeth Clare having been examined by me privily and apart from her husband and having said instrument fully explained to her, she, the said Elizabeth Clare acknowledged said instrument to be her act and declared that she had willingly signed the name for the purpose and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this twenty-third day of January, one thousand eight hundred and eighty-four.

EDWARD CARR,
[L. S.] *Notary Public, New Ross.*

Before me, Edward Carr, notary public, duly authorized, admitted, and sworn, residing and practicing at New Ross, in the county of Wexford, in that part of the United Kingdom of Great Britain and Ireland called Ireland, this day personally appeared Peter 128 Whelan, Mary Whelan, Eliza Whelan, Bridget Whelan, and Robert Whelan, known to me to be the persons whose names are subscribed to the annexed instrument, and the said Peter Whelan, Mary Whelan, Eliza Whelan, Bridget Whelan, and Robert Whelan severally and respectively acknowledged to me that they and each of them executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office, at New Ross aforesaid, this twenty-third day of January, one thousand eight hundred and eighty-four.

EDWARD CARR,
[L. S.] *Notary Public, New Ross.*

I, Richard Warneford Boyle, of the city of Dublin, in that part of the United Kingdom of Great Britain and Ireland called Ireland, notary public, duly admitted and sworn, do hereby certify that I was present and did see Catherine O'Neil, the person named in the foregoing instrument, duly sign, seal, and execute the same for the purposes and condition therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office this fifth day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[L. S.] R. W. BOYLE,
Not. Pub., Dublin.

129 THE STATE OF TEXAS,
County of Williamson.

Know all men by these presents that I, W. C. Belcher, for a valuable consideration, the receipt of which is hereby acknowledged, have this day quitclaimed, released, and conveyed, and by these presents do quitclaim and convey, to William Brady, of New York, all the right, title, claim, and interest in law and equity which I now have or may be entitled to under and from any of the heirs of Edward Hanrick, deceased, in and to the eleven leagues of land known as the Antonio de la Serda grant and the four leagues of land known as the Pedro Zarza grant and the one league of land known as the Rafael de Aguirrie grant, all of which are situated in Falls county, Texas; to have and to hold the same — the said William Brady, his heirs and assigns forever.

Witness my hand this 22nd day of Feb'y, 1884.

W. C. BELCHER.

(Acknowledgment, &c., omitted.)

130 THE STATE OF NEW YORK, }
County of New York. }

Know all men by these presents that I, Nicholas Hanrick, of said county, having been fully advised of my rights in the premises, as shown by an instrument of even date herewith, signed by myself and William Brady, of New York, in duplicate, in consideration of the sum of two thousand dollars to me cash in hand paid, the receipt of which is hereby acknowledged this day, have, first, made, constituted, and appointed, and by these presents do make, constitute, and appoint, said William Brady my true and lawful agent and attorney-in-fact, for me and in my name, place, and stead to continue the prosecution of the suits for partition now pending in the district court of Falls county, State of Texas, to which I am a party, and in my name to institute any and all proceedings at law or equity auxiliary to the same, appellate and otherwise, which may in the opinion of the said Brady become advisable for the purpose of establishing and maintaining the interest in the said lands hereinafter described, inherited by me from my uncle, Edward Hanrick, deceased, and in my name to defend all such legal proceedings now pending or which may be hereafter instituted by any and all parties against said title, I hereby surrendering and relinquishing in favor of the said William Brady, his heirs and assigns, all my right in and to the prosecution and control of said suit or suits and legal proceedings auxiliary to the same, and hereby making this power of attorney irrevocable; and I this day have, second, granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, to the said William Brady all my right, title, claim, and interest in and to all lands, tenements, and hereditaments inherited
by me from my uncle, the said Edward Hanrick, deceased,
131 situated in Falls county, Texas, including a tract of land,
known as the Antoniaco de la Serda eleven-league grant; also a tract of land known as the grant of five leagues to Pedro Zarza; also a tract of land known as the grant of one league to Rafael D'Aguiria, all situated in said county of Falls and State of Texas; to have and hold the same — the said William Brady, his heirs and assigns forever; and I hereby bind myself, my heirs and assigns, to forever warrant and defend the title thus conveyed by me to the said William Brady against the claims of any and all persons claiming the same by, through, or under me except Eliza M. O'Brien, S. Zuckerman, H. F. Ring, and W. C. Belcher and parties holding under them.

In testimony whereof witness my hand this sixth day of November, 1885.

NICHOLAS HANRICK.

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this 21st day of June, in the year one thousand eight hundred and eighty-six, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Texas to take acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Nicholas Hanrick, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and official seal the day and year last aforesaid.

EDWIN F. COREY,
Commissioner for the State of Texas;
Office, 60 Wall Street, N. Y.

Filed for record M'ch 8th, 1887, at 1 o'clock p. m., and duly recorded same day.

G. G. SLATER,
C. C. C., F. Co., Tex.,
By R. E. PARNELL, *Deputy.*

132 NICHOLAS HANRICK *et al.* *vs.* E. G. HANRICK *et al.* } No. 52. Equity.

On this the 23rd day of November, 1887, came on to be heard the motion of the defendants, E. G. Hanrick and E. J. Gurley, in the above-entitled cause to remand the same to the district court of Falls county, Texas, and, all parties to said motion being present by counsel, the same was presented to the court, and the court having heard the argument of counsel and having taken the matter under advisement and duly considered the same, it is of the opinion that said motion to remand is not well taken and that it should be overruled, and it is so ordered, adjudged, and decreed by the court; to which ruling defendants, E. G. Hanrick and E. J. Gurley, excepted in open court; and it having been made to appear to the court in reference to said cause that from prejudice and local influence said defendant, Wm. Brady, would not be able to obtain justice in said State court or any other State court to which he might under the laws of the State of Texas have the right on account of such prejudice or local influence to remove said cause, it is ordered, adjudged, and decreed by the court that said cause be, and the same is hereby, removed from said district court of Falls county to the circuit court of the United States for the northern district of Texas, at Waco, to which E. G. Hanrick and E. J. Gurley except.

It is further ordered by the court that the plaintiff- in said cause be allowed until and inclusive of Tuesday, the 29th day of November, 1887, in which to recast their pleadings in accordance with the rules of procedure governing this court in equity practice, 133 and that all the defendants therein be allowed until the next rule day, or the first Monday in December, in which to file demurrers to the same.

A. P. McCORMICK,
District Judge.

Filed Nov. 22, 1887.

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

134 In the Circuit Court of the United States for the Northern District of Texas, at Waco, Texas.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} In Equity.

To the honorable judge of said court:

1. Your petitioners, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Eliza Whelan and Catharine O'Neill, who now prosecutes this suit in her own right, her husband, Martin O'Neill, having died since the institution of the same, bring this their bill in equity against E. G. Hanrick, E. J. Gurley, Philip O'Brien, individually and — his representative capacity as the sole heir and legal representative of his former wife, Eliza M. O'Brien, deceased, she having died since the institution of this suit, and William Brady, John B. Sargent, and also Wharton Branch, individually and in such representative character as he may have — the pretended administrator of the estate of the said Eliza M. O'Brien, deceased, and also of Wm. E. Kendall and W. H. Patrick, who is in fact the administrator of the estate of the said Eliza M. O'Brien, and thereupon your orator and oratrix, complaining, say:

2. That the said Annie, Ellen, and Nicholas Hanrick and the said William Brady are residents of the State of New York and county of New York, with the exception of Annie Hanrick, who is a resident of the county of Kings, in said State, and are both citizens of said State of New York; that the said Elizabeth and Thomas Clare and Peter Whelan, who prosecutes this suit for himself individually and who also appears as next friend of his children, the said Elizabeth and Bridget Whelan, minors, and who asks in their behalf that a guardian *ad litem* be appointed for them, and Mary Whelan and Robert Whelan are residents of Wexford county,
135 Ireland, and subjects of the United Kingdom of Great Britain and Ireland, and that the said Catharine O'Neill is a resident of the county of Dublin, Ireland, and a subject of said kingdom; that the said Wharton Branch resides in the county of Galveston, Texas, and the said Wm. E. Kendall resides in the county of Harris, State of Texas, both said Kendall and the said Branch being citizens of the State of Texas, and the said John B. Sargent resides in the city of Boston, county of Suffolk, State of Massachusetts, and is a citizen of said State.

3. That heretofore, to wit, on the — day of ——, A. D. 1866, or thereabouts, one Edward Hanrick died intestate in Montgomery county, Alabama, seized in fee simple of the lands described in Exhibits A and B, hereto attached and made a part of this bill,

and that he also at the time of his death was the owner of a title of doubtful validity to ten leagues of land situated in Williamson county, Texas, known as the Raphael D. Aguirrie grant, said land being then in large part in possession of parties holding the same adversely to the said Edward Hanrick, dec'd: that he left surviving him as his sole heirs a nephew, to wit, the defendant E. G. Hanrick, who was the only child of his deceased brother Philip; a sister named Eliza O'Brien, otherwise Elizabeth O'Brien, she being the widow of Martin O'Brien, deceased, and two brothers, named respectively John and James Hanrick; that the said John Hanrick died intestate in 1870 in Wexford county, Ireland, without issue of body, he never having married; that the said James Hanrick died intestate in 1875 in Wexford county, Ireland, leaving as his sole and only heirs, his wife having previously died, five children, to wit, the said Nicholas, Annie, and Ellen Hanrick and the said Catharine O'Neill and the said Elizabeth Clare, and four grandchildren, to wit, the said Robert, Mary, Bridget, and Elizabeth Whelan, they being the children of a deceased daughter named Mary, who married the said Peter Whelan.

136 4. That the said Elizabeth O'Brien, otherwise Eliza O'Brien, of said Wexford county, Ireland, on the — day of April, 1878, or thereabouts, conveyed all her interest in said lands to the defendant, the said Eliza M. O'Brien, her interest therein being, as shown by the facts hereinbefore set forth, an undivided one-third interest; that the said Eliza M. O'Brien, joined by her husband, Philip O'Brien, subsequently conveyed to said Wm Brady an undivided one-half of the interest in said lands conveyed to her by said Elizabeth O'Brien, of Ireland; and afterwards they, the said Eliza M., joined by her husband, did convey to said Wm. Brady additional portions of her interest in the same, and did finally, on the 9th day of August, 1884, convey to the defendant Wm. E. Kendall all of her remaining right, title, claim, and interest in and to said lands; that subsequent to the execution of said deed in favor of said Kendall said Eliza M. O'Brien departed this life, and that hence the said Kendall is now the legal representative of all such interest as the said Eliza M. O'Brien had in and to said lands at the time of the execution of said conveyance in his favor.

5. That the said John and James Hanrick and the said Eliza O'Brien, of Ireland, were at the time of the death of said Edward Hanrick, deceased, subjects of the United Kingdom of Great Britain and Ireland, the said Nicholas Hanrick at that time, however, being a citizen of the United States; that by virtue of a general public statutory law of said kingdom, in force since the — day of ——, A. D. 1870, real and personal property of every description within said kingdom may be taken, acquired, held, and disposed of by a citizen of the United States in the same manner in all respects as by a natural-born subject of said kingdom, and a title to real and personal property of every description situated within said kingdom may be derived through or in succession to a citizen of the
137 United States in the same manner in all respects as through, from, or in succession to a natural-born subject of said kingdom.

6. That administration on the estate of the said Edward Hanrick, deceased, was long since closed, and that the lands described in said Exhibit A have not been fully partitioned among his heirs and parties holding under them, and that, as shown by the facts hereinbefore stated, complainants were, on the 1st day of January, 1876, the owners of an undivided one-third interest in fee simple in and to said lands, and were entitled to peacefull possession and enjoyment of the same; that afterwards, to wit, on the first day of January, 1876, the defendants E. G. Hanrick and E. J. Gurley unlawfully entered upon all of said lands and dispossessed complainants of said premises and withheld from them possession of the same until the — day of ——, 1886, to complainant's damage in the sum of $100,000.

That on said — day of ——, 1886, petitioners went into joint possession of said land with their cotenant, the said Wm. Brady, under and by virtue of a writ of possession for the same issued from this court in cause No. 14 on the law docket of said court, entitled Eliza M. O'Brien *et al. vs.* E. G. Hanrick, against the said E. G. Hanrick and in favor of the said W. H. Patrick and Wm. Brady and Philip O'Brien, and petitioners are now in possession of the same under, with, and by consent of the said Wm. Brady, except as to certain distinct and separate tracts and parcels of said land which the said E. G. Hanrick had previous to the institution of this suit selected for his own exclusive use and benefit and sold off and conveyed to third parties by deeds and contracts purporting to vest into them the entire title to the tract of land thus sold by him of which the said Edward Hanrick, deceased, died seized, in which appropriation and partial partition of said lands by E. G. Hanrick petitioners have ever acquiesced.

138 7. And the said Ellen, Annie, and Nicholas Hanrick, complaining especially of the defendants Philip O'Brien, individually and in his said representative character, and of W. H. Patrick, administrator, and of Wm. Brady, and also of Wharton Branch, and of said John B. Sargent and of William E Kendall, respectfully represent that heretofore, to wit, on the — day of —— month, A. D. 1877, 1878, respectively, they executed and delivered to the said Eliza O'Brien three several deeds of conveyance, each being in favor of Eliza M. O'Brien and each apparently conveying to her for a valuable consideration all their right, title, and interest in the estate of Edward Hanrick, deceased, and in and to the lands described in said Exhibit A. Said deed executed by Nicholas Hanrick bears date on the 21st day of August, 1877, and is recorded in volume —, page —, of the records of deeds of Falls county, Texas, the wife of said Nicholas, to wit, Kate Hanrick, having joined with him in the execution of the same; said deeds executed respectively by said Annie, otherwise Honora Hanrick, and by the said Ellen Hanrick bear date on the 3rd day of April, 1878, and are recorded in volume —, pages —, of the records of deeds of Falls county.

8. That no consideration of any value or description whatsoever was ever paid or promised in consideration of the execution of said deeds, nor was it intended by any of the parties interested in the

execution of the same that other than a bare legal interest should be vested thereby in said Eliza M. O'Brien; that the execution of the three said deeds was procured by means of the following representations made and methods pursued by said Eliza M. O'Brien, who was represented in this matter by her agent and husband, Philip O'Brien. Said Philip represented that they had been informed by their counsel in Texas that the plaintiffs could not recover
their interests in the estate of Edward Hanrick, deceased, and
139 in the lands in controversy, described in Exhibit A, unless they
first transferred the same to a native-born citizen of the United States; that having been born subjects of a foreign government they could not maintain a suit in their own names for a recovery of their interests in said lands in the courts of the State of Texas under the laws of said State, said lands being at that time claimed adversely by the defendant E. G. Hanrick, and the said Eliza M. O'Brien and the said Philip thereupon promised the said Annie, Ellen, and Nicholas Hanrick that if they would execute said deeds she, said Eliza, would immediately institute and cause to be instituted in her own name all suits and legal proceedings necessary for the recovery of said lands, and that after the same were recovered she would reconvey to the said Annie, Ellen, and Nicholas their interest in the same without other charges than their *pro rata* share of the expenses of said anticipated litigation, said representations and promises being made by her agent and husband, the said Philip, who first suggested to them that the said Eliza M. O'Brien was a suitable and proper person to whom they could convey their said interests, and he also represented that he had ample means at his disposal with which he could carry on the said litigation; and the said Nicholas, Annie, and Ellen Hanrick, believing said representations and relying on the same and on said promises, and having no knowledge to the contrary, and being wholly uninformed in regard to the laws of the State of Texas in reference to the rights of aliens, they having never visited or resided in said State, and trusting entirely to the candor and good faith of the said Philip in regard to the said representations and promises, did execute said conveyances as aforesaid.

9. That at the time of the execution of the said deeds as aforesaid in favor of Annie and Ellen Hanrick, or soon thereafter, the said
Philip and his wife signed and delivered to each of them a
140 memorandum showing that said deeds were executed for said
trust purposes and containing in substance a promise to reconvey to them their interests in said lands when the same *was* recovered, less expenses incurred in recovering the same; that both of said memoranda were of the same purport and substance; that said Ellen lost her memorandum soon after it was given to her; that the said Eliza M. and her said husband repeatedly promised to make and deliver to the said Nicholas a similar memorandum, but that they failed and afterwards expressly refused so to do.

10. That on the — day of ——, A. D. 1878, the said Eliza M. O'Brien and her said husband conveyed to the said William Brady, by deed dated on said day last named, one-half of the in-

terest in said land conveyed to her by said Annie and Ellen without their knowledge or consent and after they, the said O'Brien and wife, had been informed that the former had repudiated said conveyances in trust.

11. That on the — day of ——, A. D. 1878, the said Philip and wife, by deed dated on said day last named, conveyed an undivided one-fourth interest in the *interest in* said lands conveyed to them by the said Nickolas to one Nell B. Carpenter, who subsequently conveyed the interest thus acquired to the defendant William Brady.

12. That on the 4th day of February, A. D. 1882, the said O'Brien and wife conveyed to one Duncan Cameron all the remaining interest conveyed to them by the said Annie and Ellen Hanrick, and the said Cameron subsequently conveyed the same to said William Brady.

13. That on the 14th day of February, A. D. 1878, the said O'Brien executed a conveyance in favor of said defendant John B. Sargent, and also one in favor of defendant Wharton Branch, which may appear or may be construed to appear as vesting in the said Branch and Sargent an undivided interest in the *interests in* said lands inherited by the said Nickolas. In said conveyance
referred to in this paragraph the said Philip states that he
141 is acting for himself and wife, Eliza M. O'Brien, and for the
said James Hanrick, John Hanrick, and Elizabeth O'Brien,
of Ireland, all of whom it is stated in said deeds are entitled to an undivided three-fourths interest in said estate and lands.

14. That all of said conveyances hereinbefore referred to are recorded in the records of deeds of Falls county, Texas, and were without the knowledge or consent of the said Annie, Ellen, and Nicholas Hanrick; that all of said conveyance- above referred to were made without consideration paid by the vendees and with full knowledge on their part of the fact that the said Annie, Ellen, and Nicholas Hanrick had not conveyed to or vested in the said Eliza M. O'Brien the real or equitable title to the interest in said lands inherited by them; that the consideration of said conveyance executed in favor of the said Branch and the said Sargent was not a monied consideration or its equivalent, but some kind of an agreement on the part of the said Branch and Sargent to prosecute or cause to be prosecuted suit for the establishment of the interests of the grantors in and to said lands, the exact terms of the same being to plaintiffs unknown, and that the said Branch and Sargent took such interest, if any, as they acquired from the said Nicholas through the said Philip in privity with him, the said Philip; that the said Branch and Sargent never complied with their said agreement relative to the institution and prosecution of said suit, and that neither the said Annie, Ellen, or Nicholas Hanrick received any consideration from the execution of said deeds executed by them in favor of the said Eliza M. O'Brien as aforesaid, nor have said vendees, Brady, Branch, Sargent, Carpenter, and Cameron, ever paid any consideration for said conveyances received

by them; that neither the said Philip and his wife nor any
142 of the parties to whom they conveyed portions of their interest
in said lands conveyed to them by said Annie, Ellen, and Nicholas have ever taken any steps whatsoever or offered to take any steps whatever for the recovery of their said interests, but *who* wholly failed, neglected, and refused so to do.

15. And the complainants Annie, Ellen, and Nickolas Hanrick charge that said representations made by the said Philip and wife which induced them to make said conveyances were all wilfully false and fraudulent, and that the said Philip and wife deliberately planned to perpetrate a fraud on the said Nicholas, Annie, and Ellen and did thus obtain from them said conveyances by fraud and artifice, and the same were executed by mistake on their part.

16. And complainants further say that the said defendant, Ed. J. Gurley, claims an equitable interest in the lands appertaining to the estate of the said Edward Hanrick, deceased, including those described in said Exhibit A, in regard to the validity of which complainants say that the same is wholly unfounded in law or in equity as far as the same relates to or affects the interests of complainants in this suit; that the said Gurley had for many years anterior to the institution of this suit and had continuously down to February 13, 1880, been acting as and, in fact, being the authorized agent and attorney of the said Ed. G. Hanrick; that as his agent and attorney he had sold off by metes and bounds divers and sundry portions of the lands described in Exhibit A to divers and sundry persons by deeds which purported to convey to such persons all the title of which the said deceased Edward died seized, the said Ed. G. Hanrick claiming to be the sole and only heir of the former, as hereinbefore stated, and that during the period next before referred to herein the said Ed. G. Hanrick, by himself individually and through
other agents besides the said Gurley, had also sold off and dis-
143 posed of in the same manner other portions of said tracts of
land described in Exhibit A, and that in no instance in making said sales, either by himself directly or through the said Gurley or other agents, had the said Gurley joined the said Hanrick in the execution of said sales, neither was any portion of said land assessed against him, Gurley, for taxes, but the same were wholly assessed for taxes in the name of E. G. Hanrick alone, neither did the records of Falls county disclose any conveyance of land or interest in lands appertaining to said estate to the said Gurley either from the said Ed. G. Hanrick or from the deceased Edward during the said period, nor did ever the acts or words of the said Gurley during the period last referred to in any manner disclose the fact, if such were the fact, that at the time of the institution of this suit the said Gurley had an interest in said land itself. On the contrary, the said Gurley did until long after the institution of this suit repeatedly state to complainants, through their counsel, that while the said deceased Edward Hanrick virtually agreed to give him an interest in the proceeds of the sale of said land, and though said agreement was in whole or in part reduced to writing, yet that the original memorandum relating to the same had been lost, and that

he, Gurley, did not consider that he had any claim to any portion of the land itself of said estate by virtue of any agreement with the said deceased Edward which he could enforce against said non-resident heirs, but that he did propose to sue for the value of services rendered in their behalf and recover a judgment for the same that would be binding on said land, of which representations and statements on the part of the said Gurley the said Edward G. Hanrick, through his agents and attorneys, had full knowledge, the said Gurley being then and there an attorney for the said Edward G. Hanrick, actively engaged in assisting the latter in resisting the claims of said non-resident heirs and of parties holding under them.

144 17. That complainants, by virtue of the facts set fourth next above, in response to the claim of the said Gurley, were led to believe and did, in fact, believe that the said Gurley had no interest in said lands described in said Exhibit A which would render it necessary or expedient to join him as a party defendant in this suit, but that some time after the institution of this suit and after said Feb. 13, 1880, the said Gurley did join the said Edward G. Hanrick in the execution of deeds conveying certain portions of said lands last referred to by metes and bounds to divers and sundry persons in execution of contracts of sales previously made, and the said Gurley did, to wit, on or about the — day of February, 1882, inform complainants for the first time, through their agent and attorney, that he, Gurley, had been informed by the said Branch that he, the said Branch, had documents in his possession signed by the said Edward Hanrick, deceased, which would probably enable the said Gurley to establish the existence of such a contract, evidenced by a memorandum in writing, or would give him, the said Gurley, an equitable interest in said lands; and complainants are informed and believe that the said Gurley now publicly asserts that he can establish the existence of such a contract with the deceased Edward as will give him an equitable interest of and in and to one-third of the lands described in said Exhibit A, and so notoriously claims the same, and that these assertions, coupled also with the fact that the said Gurley has joined the said Edward G. Hanrick in the execution of said deeds as aforesaid, cast a cloud upon the title of complainants in and to said lands, greatly to their prejudice and injury.

17. And complainants further say that from said first day of January, 1876, until said — day of ——, 1886, the said E. G. Hanrick and E. J. Gurley were in the sole and exclusive possession of all of that portion of said lands described in Exhibit A which are not 145 hereinafter shown to have been sold and compromised away; that during said period petition-s were unable to get into possession of any portion of said lands refer-ed to above as being in the exclusive posession of defendants Hanrick and Gurley, and were, by threats of personal force and violence as well as by numerous legal proceedings and suits of forcible entry and detainer made and instituted by the said Hanrick and Gurley, excluded for the possession or use or enjoyment of any portion of said lands, to their damage in the sum of $100,000.

18. That the rents and profits of that portion of said land refer-ed

to next above were during said period of *of* the annual value of, to wit, $20,000 per annum.

19. That the said Ed. G. Hanrick and E. J. Gurley have cut, felled, carried away, sold off, and disposed of growing timber on said land refer-ed to next above since the first day of January, 1876, the value of $100,000.00, nor has the said Ed. G. Hanrick or Gurley ever accounted for the same to your orators or oratrix for any portion thereof, they having thereby depreciated the value of said land to the extent of, to wit, said sum of $100,000, to the damage of petitioners in said sum of $100,000.

21. And in order that the lands described in said Exhibit A, which are situated in Falls county, Texas, may be, as herein prayed, partitioned among said parties who are entitled to an undivided interest in the same, so justice and equity shall be meted out to all persons interested in and to be affected by said partition, complainants further represent unto your honor:

22. That at the time of the death of the said Edward Hanrick, deceased, and ever since said time the said Eliza O'Brien and the said James and John Hanrick and their said descendants, with the exception of the said Annie, Ellen, and Nicholas Hanrick, resided
and have continued to reside in said Kingdom of Great
146 Britain and Ireland, nor did they or either of them ever reside
in the State of Texas or have an agent in said State until
after the year 1877, and that previous to that time they had no definite knowledge of the existence of their said interest in said lands nor of the extent of the same; that on the — day of ——, A. D. 1867, or thereabouts the said defendant, Ed. G. Hanrick, took out letters of administration in the probate court of Falls county, Texas, on the estate of the said deceased Edward, and duly qualified himself as the administrator of said estate, and as such took possession of all the papers, land, titles, and effects, real and personal, of which the said Edward Hanrick, deceased, died seized and possessed of in the State of Texas, and since continued in possession of the same as administrator as aforesaid until the close of said administration; that although at the time of taking out said letters of administration he was fully informed that the said Eliza O'Brien and James and John Hanrick claimed to be respectively a sister and brother of the deceased Edward and facts and circumstances sufficient to create a presumption of the truthfulness of their claim, yet he never took any steps to ascertain whether in fact they were heirs or not of the said deceased Edward, nor did he even report to said court the existence of said heirs or of their claim to be heirs, nor did he even take any steps to ascertain whether the deceased Edward had any other relations or heirs besides himself; but, with covin and fraud and the deliberate design of appropriating solely to himself all of said effects of which the said deceased Edward died se*a*zed, he consealed from said non-resident heirs and their said ancestors and from the Eliza O'Brien, of Ireland, the knowledge of the existence of their rights, and

concealed the same from said probate court, and repre-
147 sented to said court and to the world at large that he was the
sole and only heir.

23. That the title to certain portions of the land described in said Exhibit A, situated in said Falls county, of which the deceased Edward died seized were of doubtful validity, and that the said Edward G. Hanrick, claiming to be the sole and only heir as aforesaid — the said deceased Edward, has sold off and disposed of certain portions of said lands by sales and compromises, as hereinafter detailed.

24. That a portion of said La Serda grant is in conflict with 2,641 acres of a league of land granted to Michael Sessum, for the description of which reference is made in Exhibit B, hereto attached and made a part of this bill; that the said Ed. G. Hanrick, holding out to the world at large and representing to one Catharine Cavitt in particular that he was the sole and only heir of the said Edward Hanrick, deceased, did compromise and agree with the said Catharine Cavitt and did, by deed of conveyance executed on or about the 8th day of March, 1870, quitclaim, release, and convey unto the said Cavitt said 2,641 acres of land in consideration of the sum of $1,320.05 to him in hand paid, said conveyance purporting to convey all the title in and to said tract of land of which the said Hanrick died seized, she, the said Catherine, claiming said tract of land at the time of the execution of said deed by title from and under the said Sessum; that no portion of said sum of $1,320.05 received by the said Hanrick in said compromise has ever been paid to your orators or to the said Eliza M. O'Brien, of Ireland; that said 2,641 acres of land were at the time of the execution of said compromise and are now reasonably worth the sum of $8,000.00.

25. That a tract of land embracing about 22,000 acres, more or less, the same being a part of the said Atanacio de la Serda eleven-league
grant, was and is in conflict with a tract of ten leagues of
148 land granted to Thomas J. Chambers by the proper authorities
of Coahuila and Texas, for a description of which reference is made to Exhibit C, hereto attached and made a part of this bill; that on the — day of ——, A. D. 1860, the said Edward Hanrick, deceased, instituted in the circuit court of the United States at Austin, Texas, two suits of trespass to try title for the recovery of that portion of the La Serda grant embraced in said conflict referred to next above, the same being known as the Chambers conflict, said suits being instituted against the said T. J. Chambers in said tract, which suits were shortly thereafter consolidated and styled Hanrick *vs.* Barton *et al.*; that on the — day of —— the said Edward G. Hanrick suggested to the court in the said cause the death of the said Edward Hanrick, deceased, and appeared therein as his administrator and was recognized as such by the court, and that he, the said Edward G. Hanrick, thereafter continued the prosecution of said cause as such administrator; that on the — day of —— judgement was rendered in said cause in favor of the defendants for the entire tract of land embraced in said Chambers conflict, from which judgement an appeal, by writ of error, was taken

by said administrator to the Supreme Court of the United States, at Washington; that afterwards, to wit, on the — day of ——, 1877, said writ of error was dismissed on account of said administrator failing to prosecute the same, and no further proceedings have been had in said cause since the dismissal thereof, said dismissal having — permitted by said administrator in furtherance of and as a part of a certain compromise settlement of said suit, as hereinafter detailed.

26. That on the — day of ——, A. D. 1875, one C. Baker claimed to be the owner of the two tracts of land described in Exhibit D, hereto attached and made a part of this petition, the same con- 149 taining about 1,200 acres, said tracts of land being portion of said T. J. Chambers conflict, he, the said Baker, then holding the same and being in possession thereof by virtue of a title thereto acquired by him from the executor of the said T. J. Chambers, the latter then being dead, and said title thus having been purchased by said Baker during the pendency of said cause instituted by Edward Hanrick, deceased, styled No. —, etc.; that on the day last aforesaid said Edward G. Hanrick, administrator as aforesaid, and representing himself to be the sole and only heir of said Edward Hanrick, deceased, did compromise and agree with the said Baker, and in consideration of the sum of eight thousand dollars to him paid by the said Baker, and in consideration also of a conveyance to him by the said Baker of a portion of said tract claimed by the latter, for a description of which reference is made to exhibit hereto attached and made a part of this petition, the said Ed. G. Hanrick did quitclaim, release, and convey to the said Baker said tract described in said Exhibit D and claimed by the latter, except two portions of the same conveyed by the latter to said Ed. G. Hanrick as aforesaid and described in said exhibit.

That said representations in regard to his being the sole heir of Edward G. Hanrick, deceased, were believed and relied upon by the said Baker, and the deed of conveyance executed in favor of the latter in said compromise with him described said tract of land by metes and bounds and did purport to convey to him, Baker, all the title in and to the same of which the said Edward Hanrick died seized; that said tracts of land thus released to the said Baker were at the time of said release and are now reasonably worth the sum of $8,000; that no portion of said $8,000 received by the said Ed. G. Hanrick in consideration of said conveyance has ever been paid or tendered to plaintiffs or any of them, or to the said Eliza O'Brien, of Ireland, or to any of said non-resident 150 heirs or their assigns, and that said tracts of land are now in possession of persons claiming the same under title from the said Chambers.

27. That on the — day of ——, A. D. 1876, one J. S. Jones claimed to be the owner of the several tracts of land described in Exhibit E, hereto attached and made a part of this petition, the same containing in all about 1,800 acres, said tracts of land being portions of the T. J. Chambers conflict, he, the said Jones, then holding the same and being in possession thereof by virtue of a title thereto

acquired by him from the said T. J. Chambers; that on the day last aforesaid the said Ed. G. Hanrick, administrator as aforesaid, representing himself to be the sole heir of Edward Hanrick, deceased, did compromise and agree with the said Jones and in consideration of the sum of $2,554 to him paid by the said Jones did quitclaim, release, and convey to the said Jones said tracts of land described in said Exhibit E; that said representation- in regard to his being the sole heir of the deceased Edward were believed by the said Jones and relied on by him, and the deed of conveyance executed in his favor in said compromise described said tract of land by metes and bounds and did purport to convey to him, Jones, all the title in and to the same of which the said Edward Hanrick died seized; that said tracts of land thus released to the said Jones were then and are now reasonabl*t* worth the sum of $12,000 and are now in the possession of parties claiming title thereto under the said Chambers; that no portion of said $2,554 received by the said Ed. G. Hanrick in consideration of said conveyance has ever been paid or tendered to plaintiffs or either of them, or to the said Eliza O'Brien, of Ireland, but the said Ed. G. Hanrick has appropriated the same wholly to his own use and benefit.

151 28. That on the — day of ——, A. D. 1877, one Walter Gresham claimed to be the owner of the several tracts of land described in Exhibit F, hereto attached and made a part of this bill, he having purchased the same from the administrator of the said T. J. Chambers, deceased, the same containing in all about — acres, said tracts of land being portions of said Chambers' conflict; that on the day last aforesaid the said Ed. G. Hanrick, administrator as aforesaid, representing himself to be the sole heir of Edward Hanrick, deceased, did compromise and agree with the said Gresham and in consideration of the sum of $250 to him paid by the said Gresham did quitclaim, release, and convey to the said Gresham said tracts of land described in said Exhibit F; that said representations in regard to his being the sole heir of the said deceased Edward were believed by the said Gresham and relied on by him, and the deed of conveyance executed in his favor in said compromise described said tract of land by metes and bounds, and did purport to convey to him, Gresham, all the title in and to the same of which the said Edward Hanrick died seized; that the said tracts of land thus released to the said Gresham were then and are now reasonably worth the sum of $15,000 and are now in possession of parties claiming title thereto under the said T. J. Chambers; that no portion of said $250 received from the said Gresham has ever been paid or tendered to your orators or oratrix or to the said Eliza O'Brien, of Ireland, the said Ed. G. Hanrick having appropriated the same wholly to his own use and benefit.

29. That the total sum received by E. G. Hanrick for said compromises, together with interest on the same at the rate of eight per cent. per annum, from the first day of January of the several years next following the date of such compromise to the first day of July, 1885, is shown in the following table, to wit:

152 Description of tracts.	Date of compromise.	No. acres.	Consideration.	Interest.	Amount.
Exhibit B—Catharine Cavit..	M'ch 8, 1870	2,641	$1,320 50	$1,531 78	$2,852 28
Exhibit D—C. Baker........	1875	1,200	8,000 00	6,480 00	14,480 00
Exhibit E – I. S. Jones	1876	1,800	2,554 00	1,736 72	4,290 72
Exhibit F—Walter Gresham.	1877	1,942	250 00	147 50	397 50
Totals......	....	7,583	$12,124 50	$9,896 00	$22,020 50

and that the same, with interest to the first day of July, 1887, amounts to the sum of $24,930.26.

30. That heretofore, to wit, on the — day of ——, A. D. 1877, all that portion of said Chambers conflict which had not been previously sold by said T. J. Chambers during his lifetime or by his executors and administrators subsequent to his death was sold at administrator's sale to one Geo. E. Lane; that afterward, to wit, on the — day of ——, A. D. 1877, said Geo. E. Lane and said Ed. G. Hanrick, administrator- aforesaid, did compromise and agree and settle amicably between themselves their respective and conflicting claims in and upon said tract of land in conflict; that by the terms of said compromise, in pursuance of which deeds were mutually exchanged by said parties to the same, the said Ed. G. Hanrick ratified and confirmed and quitclaimed and released unto all persons who had, previous to the day last named, purchased land within said conflict from the said T. J. Chambers or his heirs, executors, or administrators, and unto all assignees of said purchasers, all his, the said Ed. G. Hanrick's, right, title, and in-interest in and to the same, and did also convey to the said Lane the three several tracts of land described in Exhibit G, hereto attached and made a part of this bill, the same being a part of the land embraced within said conflict and containing in the aggregate about 2,800 acres, and the said Lane, in consideration of said compromise, did quitclaim, release, and convey to said Ed. G. Hanrick all his, the said Lane's, right, title, and interest in and to all that portion of said conflict which had not been up to that time sold and conveyed by the said T. J. Chambers or his heirs, executors, or administrators, except said tracts, containing about 2,800 acres, described in said Exhibit G, which he reserved to himself, and did also quitclaim, release, and convey unto all persons who had previous to said day last named purchased land within said conflict from said Edward Hanrick, deceased, or the said Ed. G. Hanrick, and unto all assignees of such purchasers, all his, the said Lane's, right, title, and interest in and to the same. The field-notes of the tract of land which embraces all said tracts of lands sold by the said Chambers during his lifetime and by his executors and administrators since his death and which were thus released by the said Ed. G. Hanrick are found in Exhibit I, hereto attached and made a part of this bill, except the said tracts conveyed to Lane and described in Exhibit G; that at the time said compromise was

effected the said Edward G. Hanrick held out to the world,
153 and represented to the said Lane in particular, that he was
the sole and only heir of the said deceased Edward, which representations were then and there believed and relied upon by the said Lane, and it was agreed at the time of making said compromise last referred to that said suit No. —, styled Hanrick *vs.* Barton *et al.*, etc., instituted by the deceased Edward, then pending by writ of error in the Supreme Court of the United States, at Washington, should be dismissed and the further prosecution of the same abandoned; and, accordingly, on the — day of ——, 1877, said suit was dismissed for want of prosecution by the Supreme Court of the United States at the instance of the appellees therein at that time and with the consent of said administrator, and no further proceedings have since been had in the same; that complainants and the said Eliza O'Brien, of Ireland, and said heirs of James Hanrick have acquiesced in the proceedings taken by the said Ed. G. Hanrick, administrator as aforesaid, in effecting said compromise with the said Baker, Jones, Gresham, and Lane, and in his abandonment of said cause in said Supreme Court of the United States, whereby said compromises have been made binding on complainants, and complainants have elected and do hereby elect to acquiesce in and ratify the same as well as said compromise effected with the said Cavit.

31. That by reason of the said Ed. G. Hanrick's being administrator of the estate of the said deceased Edward, and of having in his possession all the latter's papers and effects, and of his being then and there in possession of the land allowed to him in said *said* compromise, as was in truth the fact, and by reason of the fact that his cotenants were all non-residents of the State, he, the said Ed. G. Hanrick, had superior means of information at his command as to the value of said Chambers' title and greater advantages for acquiring the same over his cotenants; that no other con-
154 sideration for said conveyance acquired by the said Ed. G.
Hanrick as aforesaid in his own name was given by said Lane except such as has been hereinbefore shown; that the title of the said Edward Hanrick, deceased, to the lands embraced in said conflict was a superior title to that of said T. J. Chambers or any of the defendants in said suit No. —, and that had the same been prosecuted to the end the result would, in all probability, have been favorable to said Ed. G. Hanrick as such administrator.

32. That said E. G. Hanrick had, at divers times prior to the institution of this suit, and also many instances since the institution of this suit, selected certain specific portions of said tract of land described in Exhibit A for his own sole and exclusive use and benefit, and had wholly appropriated the same for his sole and exclusive use and benefit, and has thereby attempted to effect and has in fact effected the partition of the same between himself and said coheirs and cotenants, and has sold and conveyed the same to the persons named in Exhibits K & L, hereto attached and made a part of this bill, at the divers times shown therein, as well as to many *of* other persons whose names are to complainants unknown, the tracts of land thus selected and appropriated by the said

E. G. Hanrick being situated on that part of the lands described in said Exhibit A which is not included in any portion of the same disposed of by E. G. Hanrick in compromise as hereinbefore detailed.

33. That complainants have acquiesced in the selection, appropriation, use, and dispos*u*tion of said tracts of land referred to next above made by said E. G. Hanrick, and have consented to the same and to the partial partition of the lands described — Exhibit A therefrom resulting, and have refrained from disturbing the possessions of the parties who have as aforesaid purchased or contracted to purchase from the said E. G. Hanrick said tracts of land by suit or
otherwise. Petitioners have refrained from making them par-
155 ties to this suit at the time of the institution of the same,
complainants thus having then and at all times elected to
acquiesce in the selection and appropriation of said tracts by defendant E. G. Hanrick and the partial partition of said estate therefrom resulting and being thus produced by said defendant-, E. G. Hanrick and E. J. Gurley.

34. That by the terms of said conveyances last referred to the said E. G. Hanrick, in some instance being joined by said E. J. Gurley, has attempted in each and every instance to convey to said parties named in said Exhibit- K and L and to many other persons not named therein the whole and entire title of which the said Edward Hanrick died seized in and to the tracts of land so conveyed, using in the deeds of conveyance to such purchasers and in contracts to convey words purporting to convey or to agree to convey such entire and undivided interest and describing the lands therein conveyed by metes and bounds; that at the time of making said conveyances he represented to the world at large and to the grantees named in Exhibits K and L and to all *two* whom*e* he made said sales in particular that he was the sole heir of the said Edward Hanrick, deceased, and that he conveyed and did and would convey to said grantees all the right, title, and interest of which the said Edward Hanrick died seized in and to said tracts of land; that said grantees, believing said representations and relying on the same, were induced to purchase by means thereof and did purchase said tracts of land in good faith, with the understanding and belief that they were acquiring by said purchase the entire title of which the said Edward died seized in and to the same.

36. And complainants further represent that said E. G. Hanrick had also at divers times anterior to the institution of this suit
in the same manner and on the same representations as
156 detailed in paragraphs numbered 32, 33, & 34 selected and
appropriated to his own exclusive use and benefit and sold
and contracted to sell to divers and sundry persons certain portions of said land last referred to, whose names and the exact quantity of land which he has thus selected and sold or contracted to sell respectively to such persons are to petitioners unknown.

37. That the aggregate value of the tracts of land described in said Exhibit- K and L and of those sold and contracted to said sundry persons referred to next above and thus selected and appropriated by the said E. G. Hanrick and E. J. Gurley for their own

exclusive use and benefit are reasonably worth, exclusive of the value of improvements placed thereon since the same were sold and contracted to be sold as aforesaid, the sum of, to wit, $200,000; that when said sales and contracts of sale were made the lands thus sold and contracted for were wild and unimproved lands, and that the price paid and agreed to be paid for said lands was in every instance the reasonable value of the same; that said lands are now in the possession of parties holding the same under title or contract for title from the said Ed. G. Hanrick and E. J. Gurley adversely to complainants, and the same largely exceed in value, quantity and quality considered, one-third of the land described in Exhibit A, of which the said Edward Hanrick died seized, exclusive of the land included in said compromise as aforesaid and shown in said Exhibits B, C, D, E, F, G, I, and on that partition of said lands wherein prayed the entire interest of the said Hanrick and Gurley will be absorbed by said land selected, appropriated, and sold by them as aforesaid and will be left for petitioners and to said defendants holding under title from said Eliza O'Brien, of Ireland, all of said lands described in said Exhibit A not already sold or conveyed or compromised as aforesaid by *by* the said E. G. Hanrick before the institution of this suit.

157 That since the institution of this suit the said Hanrick and Gurley have attempted to sell and are still attempting to sell and in some instances have actually sold and contracted to sell, and are still attempting to do the same, certain portion- of the lands described in said Exhibit A by conveyances purporting to convey and by contracts purporting to contract to convey to such purchasers and the holders of such contracts respectively all the title of which the said Edward Hanrick died seized in and to the tracts of land so sold and for which contracts of sale were made as aforesaid, and they have thus let such purchasers and the holders of such contracts into possession of portions of the land described in said Exhibit A, the latter thus holding the same under the said E. G. Hanrick adversely to your orators and oratrix; that the said Ed. G. Hanrick and Gurley have and will hereafter, in all probability, unless prevented from so doing, in this manner seriously embarrass *t*our orators and oratrix and seriously retard them in the ultimate recovery and enjoyment of their rights in and to said lands.

39. That since the institution of this suit the said E. G. Hanrick and E. J. Gurley have cut and felled and carr*ei*d away and sold and authorized the cutting, felling, conveying away, and selling of large quantities of growing timber on said land remaining unsold and undisposed of, and they are still cutting off and selling the same and authorizing others to cut, carry away, and sell the same, and they intend and propose still to do the same, whereby complainants have been and are being and will continue to be irrepa*u*rably injured and damaged, *both* they, the said E. J. Gurley and E. G. Hanrick, both being insolvent or at least having no appreciable means except what is involved in this suit.

40. And petitioners further represent that the said Wm. Brady,

acting in accordance with the example set before him by the 158 said Hanrick and Gurley, has also since the issuance of said writ of possession selected and appropriated certain specific portions of the land described in said Exhibit A for his own exclusive use and benefit and has sold and conveyed the same to third parties, thereby effecting a partial partition, in which partition complainants have acquiesced, the tracts of land thus sold amounting in the aggregate to a much smaller amount of land, quantity and quality considered, than will be set aside to him in this proceeding.

41. And in reference to said ten leagues of land, situated in Williamson county, granted to Raphael D'Aguirie, referred to in paragraph 3 of this bill, petitioners say they have never sought to have the same partitioned in this suit, said land being outside of the northern district of Texas, and that the same cannot be partitioned in these proceedings, since it is in the possession of parties who are holding it adversely to all the parties to this suit.

42. And petitioners further say that on the — day of December, 1878, about the time of the institution of this suit, they also instituted a suit of trespass to try title for said land in Williamson county against said E. G. Hanrick and did, on the — day of ——, 1883, recover judgement against said E. G. Hanrick establishing their title as against him to an undivided one-third interest in said lands, which said judgement was, on appeal, duly affirmed by the supreme court of the State of Texas; that at the time of the institution of said suit and at the time of the recovery of said judgement and for many years previous thereto and down to the present time said ten leagues of land were and have been and are now in the possession of parties holding the same adversely to petitioners and said E. G. Hanrick and E. J. Gurley and to all parties claiming the same under title from heirs of Edward Hanrick, deceased, said adverse occupants claiming and asserting that 159 the title to said ten leagues of land owned by the said Edward Hanrick, deceased, at the time of his death was and is null and void.

43. That during the years 1872, 1873, 1874, and 1875 or during one or more of said years said E. G. Hanrick instituted some ninety or more suits of trespass to try title in the district court of Williamson county against said adverse occupants and claimants of said land refer-ed to in the paragraph next above, said suits being brought by him in his own name alone as the sole heir of Edward Hanrick, deceased, he in no instance disclosing in his petitions filed in the same the fact that any one else than himself alone was entitled to an interest in said lands under Edward Hanrick, deceased, said suit in all cases on the face of the pleadings therein being prosecuted for his own sole and exclusive use and benefit, although he was, as hereinbefore shown, at the time of the institution of said suits the administrator of the estate of Edward Hanrick, deceased, and as such administrator he was there prosecuting said suit of Hanrick *vs.* Barton for the recovery of said lands embraced in said Chambers conflict in Falls county, Texas; that, as shown by the

fact hereinbefore alleged, some of petitioners at the time of the institution of said suits above referred to were residents of the State of New York, while the others were residents of Ireland, and all were wholly ignorant of their rights in the premises.

44. That the defendants in all or nearly all of said suits referred to above claim title to said land under pre-emption and homestead claims or under locative interest acquired by the location of land certificates on said *said* land issued by the State of Texas, and that — the time of the institution of this suit against E. G. Hanrick brought by petitioners in the district court of Williamson county
nearly all, if not all, of said adverse occupants of said land
160 had been in adverse possession for more than three years
against petitioners and all parties claiming under Eliza O'Brien, of Ireland, a period sufficient to perfect their title absolutely as against petitioners by the plea of three years' limitation under color of title from the sovereignty of the soil, and that the running of said statute of limitations as against all the other heirs of Edward Hanrick, deceased, and parties claiming under them except said E. G. Hanrick was not and had not been suspended by the institution of said ninety suits by the said E. G. Hanrick.

45. That petitioners long since conveyed to Wm. Brady all their right, title, claim, and interest in and to said lands in Williamson county and have no interest in the same, nor did they have any interest in the same when the prayer for such partition was made for the first — in the pleading of defendants Hanrick and Gurley filed in this suit in the district court of Falls county.

46. And petitioners further say that the title to said lands in Williamson county of which the said Edward Hanrick died seized is, in fact, null and void; that in all of said ninety suits which have thus far been tried the absolute nullity of said title on account of *account of* the alleged forgery of the original grant to Raphael D'Aguirie has been found by the juries empaneled — the cases, which said findings of the juries have been repeatedly and in all instances confirmed both by the trial courts and by the supreme court of the State of Texas.

47. That the said William Brady and others, claiming to have acquired, *and* purchase and conveyance, all of the title in and to said lands in Williamson county inherited by said Eliza O'Brien, of Ireland, and James Hanrick, instituted a suit for partition of said ten leagues of land on the — day of — month, 1884, in the district court of Williamson county, against the said E. G. Hanrick and E. J. Gurley, the prosecution of which suit for *petition*
was resisted by the said Hanrick by proper pleadings filed
161 on the express grounds, as alleged by him, that the land
could not be partitiond, because of the fact that the same was wholly in the possession of parties holding the same advers-ly to the title of both plaintiff and defendant in said partition suit; and petitioners say that the facts relative to the adverse possession of said ten leagues of land in Williamson county at the present time are precisely the same as they were when the said E. G. Hanrick filed his pleading in reference to the same in said suit referred to;

which said pleadings in that respect were adopted by the said Gurley.

47*a*. And petitioners further say that on the trial of said suit for partition brought by the said Wm. Brady and others, referred to in *in* the next preceeding paragraph, the plaintiffs were forced to take a nonsuit on account of objections made by said defendants therein and sustained by the court to the introduction in evidence of certain depositions taken in order to prove the heirship of the said James and John Hanrick and Eliza O'Brien, of Ireland, to said Edward Hanrick, deceased.

47*b*. That after said nonsuit was taken the said Wm. Brady, joining others with him, reinstituted, without delay, a similar suit for partition of said lands in said county against the said Hanrick and Gurley in said district court of Williamson county, which suit is still pending, said suit being instituted for the purpose of perfecting the titles of a considerable number of parties in possession of said land, to whom he had sold by way of compromise for a comparatively nominal sum the title of Edward Hanrick, deceased, he having followed in so doing the example set by the said Hanrick and Gurley, who had previously made similar compromise sales.

48. Petitioners have been informed that the said Wm. Brady has not attempted to press the trial of said partition proceedings referred to next above, because he has been advised by his counsel and also by the counsel of the parties to whom he made said
162 compromise sales as aforesaid that on account of said adverse
possession the lands could not be legally partitioned so long as the same was thus adversely held in possession by parties claiming under other than the title of Edward Hanrick, deceased.

To the end, therefore, that the said defendants may, if they can, show why your orators and oratrix should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, except wherein answer under oath is specially waived, as appears in the note hereunto following, and according to the best and utmost of their respective knowledge, rememb*ers*, information, and belief, full, true, direct, and perfect answer — to such of the several interrogatories hereinafter numbered and set forth as by note hereinafter written they are respectively required to answer—that is to say:

1st. Whether it is not a fact that all the statements contained in paragraphs 1 to 6, inclusive, in this bill are true; and if you do not answer yea, then state whether it is not a fact that some of the statements in said six paragraphs are true; and if to this you answer yea, then state which of the statements therein contained you do not deny and which of the same you say on oath are not true, and also state fully what the facts are, so far as you personally know, in reference to the matters therein mentioned which you say are not correctly stated in said paragraphs.

2. Whether it is not a fact that all the statements contained in paragraphs 16 and 17 in this bill are true; and if you do not answer yea, then state whether it is not a fact that some of these statements

contained in said two paragraphs are true; and if to this you answer yea, then state which of the statements contained you do not deny and which of the same you say on oath are not true, and also state fully what the facts are, so far as you personally know, in reference to the matters therein mentioned which you say are not 163 correctly stated in said paragraphs.

3. Whether it is not a fact that all the statements cont*ia*ned in paragraphs 17 A, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47 A, 47 B, and 48 are true; and if you do not answer yea, then state whether it is not a fact that some of the statements contained in said paragraphs from 17 A to 48, inclusive, are true and — to this you answer yea, then state which of the statements therein contained you do not deny and which of the same you say on oath are not true, and also state fully what the facts are, so far as you personally know, in reference to *to* the matters therein mentioned which you say are not correctly stated in said paragraphs.

4. State whether it is not a fact that, during the period from the institution of this suit down to the time of the affirmance by the Supreme Court of the United States of the said judgement in cause No. 14 on the docket of this court, petitioners — prevented by defendants Hanrick and Gurley from taking possession of any portion of said lands described in Exhibit A under their claim of title from Edward Hanrick, deceased.

5. Whether it is not a fact that, during said period next above referred to, the said E. G. Hanrick and E. J. Gurley claimed to be in the exclusive possession of all of said lands described in said Exhibit A not sold off or compromised by them, and that they maintained their possession of the same successfully as against parties claiming under petition by suits of forcible entry and detainer and by suits for possession brought against parties attempting to hold under partitions or some of them.

6. Whether it is not a fact that, during the period next above referred to, the said E. G. Hanrick and E. J. Gurley denied the right of petitioners or either of them or any one claiming under them to the possession of any portion of said land referred to next 164 above and publicly threatened to put all who attempted to go into possession of said lands under them *with* suits of forcible entry and detainer, and that — some instances during said period the said Hanrick, with the knowledge and consent of the said Gurley, did, in fact, put parties off from said lands by forcible entry and detainer proceedings who were put there by complainants or under authority of them upon the ground that the said Hanrick was in the sole and exclusive possession of said lands.

7. Whether it is not a fact that all the statements contained in paragraphs 7 to 15, inclusive, in this bill are true; and if you do not answer yea, then state whether it is not a fact that some of the statements in said paragraphs are true; and if you answer yea, then *then* state which of the statements therein contained you do not deny and which of the same you say on oath are not true and to what extent the same are not true.

Defendants E. G. Hanrick and E. J. Gurley be required in their answer to give a full and complete statement showing—

1. The names of all persons not enumerated in said Exhibits K and L to whom they or either of them have sold lands out of said tracts described in said Exhibit A or contracted to sell the same previous to and since the institution of this suit, including the lands compromised by them as aforesaid.

2. A description of each tract of land sold by them or either of them to the persons referred to next above or which they or either have contracted to sell to such persons.

3. The date when such sales or contracts of sales were made respectively; and,

4. The consideration of each, respectively, if money, the amount of the same paid or agreed to be paid in each instance, and date of payments and the amount of the same now due, if any, in each instance.

165 5. The amount and quantity of timber cut off from said land and sold by them or by authority from them or either of them and the value of the same, with a full and detailed description of all transactions in reference to the same had by them or either of them, giving the names of all parties to whom they had sold timber and names of all parties authorized by them to cut timber on said land.

And petitioners pray that a special master be appointed by the court to partition said land, and that he be instructed by the court—

1. To divide that portion of said La Serda grant described in Exhibit A of which the said Edward Hanrick died seized into two parts or portions, so that the greater portion, quality and quantity of land considered, and also the estimated value of the tracts conveyed by E. G. Hanrick in said compromises, considered in accordance with the special instructions in reference thereto given below, shall be double the value of the lesser part, which lesser part shall be assigned to complainants.

2. To divide the same in such manner that the greater in value of said portions shall include said tracts of land conveyed by said Ed. G. Hanrick to said Cavitt, Baker, Lane, Gresham, and Jones and described in said Exhibits B, D, E, F, G respectively, and also *in* said tract of land conveyed by said Ed. G. Hanrick to said parties named in Exhibit K, which tracts are therein described.

3. That in making the division the value of the tracts of land conveyed and released to the said Cavitt, Baker, Lane, Gresham, and Jones shall be estimated as being worth the amount received by the said Ed. G. Hanrick in consideration of said compromises, including interest on the same at the rate of eight per cent. per annum from the first day of January next succeeding the date
166 of each of said conveyances to the time when said partition
shall be made, and that the value of the tracts described in Exhibit K be estimated as though the same were wild and unimproved lands, regardless of the improvements placed thereon subsequent to the date of said sales & contracts, and include all of said lands described in Exhibit I.

4. That said larger portion shall also include the said tracts of land situated in La Serda grant sold by Ed. G. Hanrick, and which he has contracted to sell, which are not described in said Exhibit G, but which his answer may disclose, as referred to hereinbefore in section —, page —, of this petition, or which may come to the knowledge of the said special master, and also be estimated in value as though the same *was* wild and unimproved lands, so far as this can be done without prejudice to the rights of the cotenant of said E. G. Hanrick and E. J. Gurley, preference being given to the tracts conveyed by deeds and contracts of earliest dates.

5. To divide said five leagues granted to Pedro Zarza, of which the said Edward Hanrick died seized, which are described in Exhibit A, each into two parts, the lesser in value of which to be set aside to complainants, the division also to be made in such manner that the greater part shall include the lands sold by Ed. G. Hanrick and described in said Exhibit L, and also include the tracts situated in said grant to Zarza, which he had sold and contracted to sell previous to the institution of this suit, which are not described in Exhibit L, but which his answer may disclose as referred to in section —, page —, of this petition, or which may come to the knowledge of the said master, the same also to be estimated in value as though the same were wild and unimproved lands, the division to be so made, quantity and quality to be regarded, that the greater part shall be double of the lesser, the latter to be assigned to complainants so far as can be done without prejudice to the rights of complainants.

167 6th. To divide in the same manner said tract of one league granted to Rafael Aguirre, situated in Falls county, Texas, and described in said Exhibit A.

And complainants pray that a decree be rendered in their favor against all defendants in this suit for a third interest in said land, and that the same be set aside to them as prayed for, and their exclusive right and title to the same be established as against the said defendants E. G. Hanrick, E. J. Gurley, Wharton Branch, John B. Sargent, and all said defendants in complainants' bill herein named, and that they also recover judgment against the said defendants E. G. Hanrick and E. J. Gurley for the sum of $100,000 as their share of rents and profits, or in lieu of such rents and profits that they have judgment against the said Hanrick and Gurley for the sum of $100,000 as damages for the injury and loss sustained by complainants for being deprived of the use and enjoyment of their interest in said land described in said Exhibit A during said period from the first day — Jan., 1876, to the — day of ——, 1887.

Complainants also pray that they have and recover of and from said defendants E. G. Hanrick and E. J. Gurley the sum of $100,000 also in addition as their share of the value of the timber cut off from said lands and sold and disposed of by the said E. G. Hanrick and E. J. Gurley, or in lieu of the same that they recover of and from said two defendants the sum of $100,000 as damages on account of the injury to them resulting from the depreciation in the value of said lands caused by the destruction and removal of said timber by said defendants Hanrick and Gurley.

41. And complainants pray that such other or different instructions be given said commissioners in the premises and such other or different relief be granted complainants in regard to the partition of said lands as the nature of the case shall require and 168 as to your honors shall seem me*te* and equitable under the circumstances.

H. F. RING,
Att'y and Solicitor for Complainants.

NOTE.—The defendants E. G. Hanrick and E. J. Gurley are required to answer the interrogatories numbered one, three, four, five, and six. The defendant Gurley is required to answer interrogatory two, but his answer of the same under oath is expressly waived. The defendant Wharton Branch is required to answer interrogatory seven, but his answer of the same under oath is expressly waived by complainants.

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EXHIBIT A.

I.

Description of the Land in Falls County, Texas, of which the said Edward Hanrick Died Seized.

Tract number one, the same containing eleven leagues of land originally granted to Atanacio de la Serda, being situated in said county, on the left bank of the Brazos river, at or near the entrance therein of an old bed of the river and bounded and described as follows, to wit: Beginning at a point on the bank of said river near the old bed aforesaid, from which a sycamore ten inches in diameter bears south 47 west 15 varas distant, and another fifteen inches in diameter bears south 84½ west 21 varas; thence running north 62 east 27,626 varas to a stake in prairie; thence north 28 west 10,000 varas; thence S. 62 west to a stake on bank of said river, from which a poplar twelve inches in diameter bears south 58 east 10 varas, and another six inches in diameter bears south 58¾ east 22 varas; thence following the meanders of said river to the place of beginning. From the foregoing-described eleven leagues of land, however, are to be taken the following-described tracts, to wit:

1. A tract of 649 acres conveyed by the said Edward Hanrick, deceased, to the county of Falls and including the town of Marlin: Beginning at the southwest corner of the said town tract at a stake from which a mesquite seven inches in diameter bears north 55 east 104 varas; another mesquite six inches in diameter bears south 22 east 400 varas; thence west 1,900 varas to a stake; thence south 1,900 varas; thence east 1,900 varas to the place of beginning.

2. A tract of land conveyed by said deceased Hanrick to J. M. Stiner, being in conflict with the W. N. P. Marlin survey: Begin-

ning at the northwest corner of said survey and running
170 north 45 and east with the north line of the same to a point
whence a line running parallel with the western boundary to the southern bound-ry of said Marlin survey will include the *the* quantity of 320 acres; also 320 acres to be taken by commencing on said north line where the above-named 320-acres survey turns, and running with said parallel.line of said above-named 329 acres to a point where a line running parallel with the north boundary line 1,000 varas will include said quantity of 320 acres.

3. A tract of land conveyed by the said Edward Hanrick, deceased, to B. W. Shields, the same being a part of the La Serda grant: Beginning at the southwest corner of a survey of 940 acres made for the Marlin tract, thence south 44 west 5,390 varas to stake on the Brazos river, — a cottonwood tree twelve inches in diameter bears south 57 east 20 varas, and another thirteen inches in diameter bears south 1⅛ west 15 varas; thence down said Brazos river with its meanders 2,820 varas to a corner or hackberry four inches in diameter — bears north 20 west 1½ varas; thence north 44 west 5,510 varas to a stake, from which post oak sixteen inches in diameter bears north 56 west 43 varas; thence north 44 west 1,435 varas to beginning, containing 1,500 acres; and another survey of 1,500 acres: Beginning at the southwest corner of said town tract, thence south 44 west 5,390 varas to a stake on the river, from which a cottonwood twelve inches in diameter bears south 57 east 20 varas to another thirteen inches in diameter, which bears south 1½ west 15 varas; thence up the river with its meanders 2,440 varas to corner or two hackberries ten inches in diameter, from which a cottonwood eighteen inches in diameter bears north 5 west 6 varas; thence north 44 east 5,540 varas to stake; thence south 46 east 1,802½ varas to beginning.

4. A tract of land containing about 700 acres, the same
171 being all that portion of a grant of — acres to Green Durkin,
which is in conflict with said Atanacio de la Serda grant: Beginning at the point where the south line of said La Serda grant intersects the east line of said grant to Green Dunkin, thence north 28 west to the northwest corner of said Dunlin grant; thence north 62 west to the east line of said La Serda; thence south 28 east with the La Serda line to the southeast corner of said La Serda grant; thence south 62 west with the south line of the La Serda to the place of beginning.

5. A tract of land containing about 800 acres, the same being all that portion of a league of land granted to John Marlin: Beginning at a point where the west line of the said Marlin league intersects the south line of said La Serda grant, thence north 28 west with said Marlin line to the south line of the said T. J. Chambers grant of ten leagues; thence north 45 east with the said Chambers line to the northeast corner of said John Marlin league; thence south 28 east with the east line of the said Marlin league to the south line of the said La Serda; thence with the south line of the La Serda south 62 west to the place of beginning.

Tract number two, the same containing five leagues of land,

situated in Falls county, lying in two bodies, the first of which, containing four leagues of land, more or less, adjoins the survey of Ignacio Galinda: Beginning at the lower corner of said survey, on the right bank of the Brazos river, thence south 62 west, following the lower line of said survey, 19,332 varas to the second corner of this tract; thence south 28 east 5,000 varas to the third corner; thence north 62 east 730 varas to the Brazos river for the north corner; thence up the river with its meanderings to place of beginning. The second of said tracts of land, containing one league, begins at the west or northwest corner of the survey of two leagues of Juan Jose Acosta; thence south 62 west 10,000 varas; thence
172 south 28 east 5,000 varas; thence north 62 degrees east 10,000 varas; thence north 28 degrees west to the place of beginning. From the foregoing five leagues of land, however, are to be taken—

1. A tract of land, containing 320 acres, vested by decree of court in Henry Juty: Beginning at a stake in prairie for southwest corner, thence north 51 east 283 poles to stake for west corner, from which a post oak marked 1 bears north 51 west 1 pole and 7 links; thence south 39 east 18 poles to stake; thence south 39 east $136\frac{2}{2}\frac{1}{8}\frac{4}{3}$ poles to stake, from which post oak seven inches in diameter, marked II, bears south $35\frac{1}{2}$ west 13 links, another marked I bears west $60\frac{1}{2}$ 14 links; thence south 61 and west 360 poles; thence north 38 east $136\frac{2}{2}\frac{1}{8}\frac{8}{5}$ poles to beginning.

2. A tract, containing 668 acres, out of the said Zarza grant: Beginning at a cedar stake on south line of the Zarza grant, from which an elm marked X bears south $74\frac{1}{2}$ east.

Tract number three, a tract of land containing one league, more or less, the same being a portion of eleven leagues of land granted to Rafael Aguirie, being situated in Falls county, Texas, on a branch of Cow bayou: Beginning at the southwest corner of two leagues of land granted to Juan Jose Acosta, which is a stake in the upper boundary of four leagues of land granted to Jose Antonio Monchaca, from which a cedar five inches in diameter bears north 47 east 14 varas distant, and an elm six inches in diameter bears S. 32 W. six varas; thence running south 62 west 10,000 varas to stake inside of boundary for the second corner; thence north 28 west 250 var-s to the southwest corner of a league of land granted to Pedro Zarza; thence north 62 east with the southeast boundary ten thousand varas to the southeast corner in southwest boundary of the land of Acosta; thence south 28 east to the beginning, said tract being delineated; thence north 62 east 1,900 to stake in thicket for northeast corner, crossing Cow bayou at 80 varas and re-
173 crossing; thence 28 south east 1,933 varas to beginning.

EXHIBIT B.

A tract of land in Falls county, Texas, east of the Brazos river, the same containing 2,642 acres, more or less, and being that portion of the Atanacio de la Serda grant which is in conflict with a league of land granted to Miguil Sessum: Beginning at the northeast corner of the Courtney league for the northwest corner of this survey, a stake, from which a post oak marked X bears north 14 east 73 varas; thence north 60 east with the north line of the Sessum league 4,888 varas to the northwest corner of the same; thence south 30 east to the lower line of the Antonacio de la Serda grant; thence south 62 west with the said La Serda grant to a point where the west line of the Sessum league intersects the same; thence north 30 west 3,033 varas with the west line of the Sessum to the place of beginning.

Exhibit C.

A tract of land in Falls county, Texas, containing about — acres, more or less, the same being the tract of land embraced within a conflict of the Atanacia de la Serda eleven-league grant and the T. J. Chambers grant of ten leagues, said — acres in conflict lying within and being a part of each of said grants, the same being that portion of the Atanacio eleven — grant which lies within the following-described areas: Beginning at a point on the east bank of the Brazos river where the lower line of the T. J. Chambers grant of the west five of said ten leagues granted to him intersects said river, said point being about 400 varas below the point on said river bank, which is the southwest corner of said Antanicio de la Serda eleven-
league grant described in said Exhibit A, thence north 45
174 east with the lower line of said ten leagues granted to said T.
J. Chambers at about 2,000 varas, crossing the lower line of said La Serda grant to the most easterly corner of the block of five leagues of said ten leagues granted to said T. J. Chambers; thence north 45 west with the said T. J. Chambers line to the point where it intersects the north line of the La Serda grant; thence south 62 west with said La Serda grant line to the point on the east bank of the Brazos river, which is the northwest corner of the La Serda grant; thence down the river to the place of beginning, embracing about — acres.

Exhibit D.

Two tracts of land sold by the defendant E. G. Hanrick to C. Baker, the same being within said Chambers conflict, the first of said tracts containing 1,097 acres, more or less: Beginning at the southeast corner of a survey in the name of Mrs. Moore, thence south 45 west 550 varas with her line to her southwest corner; thence north 45 west 804 varas with Mrs. Moore's line and a line of a survey in the name of Nettles to the corner of a tract of land in the name of Stewart and Haley on the Belton road; thence with said road with line of said Stewart and Haley survey, with its meanders, south 62½ west 1,152 varas, south 82 west 495, south 62 west 120, south 45 west 157 varas to northeast corner of survey in name of Norwood; thence south 45 east 408 varas to the southeast corner of said Norwood survey; thence south 44¾ west 1,540 varas with the line of said Norwood survey to Brazos river; thence down said river meandering the same to the upper corner of the Shields

survey; thence north 45 east 3,810 varas with said Shields' line to the corner of small survey in the name of Parker Bros.; thence north 45 west 550 varas to the place of beginning; the second of said *con*tracts containing 283 acres, more or less, being a tri-
175 angular tract of land lying between the Marlin 640-acre
tract and the turnpike road leading from Marlin to the bridge, and being all that part of a survey lying north of the turnpike road, to wit: Beginning at the southwest corner of 640 acres known as the Marlin town tract, thence north 45 west 1,810 varas to the line of Jones' plantation; thence north 45 east — varas to bed of Flat creek; thence to northeast corner of Jones' plantation; thence southeast to northwest corner of said town tract; thence south with the line of said town tract to the line of the small survey for Dunwright; thence with the said Dunwright line to where it intersects the said town survey; thence with the west line of said town survey to place of beginning.

EXHIBIT E.

Field-notes of six tracts of land sold by Ed. G. Hanrick to J. S. Jones, the same being each within the said Chambers conflict.

Tract No. 1, containing 930 acres, begins at the southeast corner of a tract of three hundred acres sold by T. J. Chambers to Bryan Barry, the same being the northeast corner of a tract sold by the said Chambers to Charles Stewart, containing about four hundred acres, a stake, from which a mesquite six inches in diameter bears south 45 west 25 varas, a post oak 24 inches in diameter bears south 48 west 10.3 varas; thence north 45 west 496 varas to a small lone post oak in Bucksnort prairie, said post oak being the northeast corner of said Barry tract, on the east line of a tract of 320 acres sold by Chambers to Barton; thence with said Barton's east line north 29½ east 372 varas to northeast — of said Barton tract; thence with Barton's north line north 58 west 601 varas to stake, from which an elm 18 in. diameter bears due north 2½ varas; thence north 32 east 300 varas to stake, from which an elm 6 inches in diameter bears north 46 east 7 varas; thence north 58 west to Mc-
Collough's slough; thence up the slough to point where
176 south line of Frank's place crosses the same, from which a
hackberry marked Z bears north 6 west 7 varas; thence with said line north 45 east 940 varas to the southeast corner of said Frank's place; thence due east 1,380 varas to a stake on west side of right of way of Waco Tap railroad; thence down the same south 29½ east 2,126 varas to an intersection with the W. N. P. Marlin north line; thence with the same south 43 west 665 varas to southeast corner of 100-acre tract sold by Alexander, as agent of Mrs. Abbie Thompson, to J. S. Jones; thence following the line of said tract north 45 west 250 varas, south 45 west 834 varas, north 45 west 940 varas, and south 45 west 400 varas to the beginning.

Tract number two, the same containing 400 acres: Beginning at the southeast corner of tract known as the Bryan Barry, from which a mesquite six inches in diameter bears south 45 west 25 varas, and a post oak 24 inches in diameter bears south 48 west 103 varas: thence south 45 east 900 varas to stake in John Marlin's line; thence with said line south 43 west 2,500 varas to another stake in Marlin s line; thence north 45 west 900 varas to lower or south line of Barry tract; thence with the same north 45 west 2,000 varas to the place of beginning.

Tract number three, the same containing 112 acres of land on the McCollough's slough: Beginning at the northwest corner of a survey of 100 acres for King, thence south 45 west 474 varas; thence south 30 east 75 varas to McCollough's slough; up said slough with King's west line to the beginning.

Tract number four, the same containing 385 acres: Beginning at the southwest corner of a 300-acre tract of land conveyed by Ed. Hanrick to B. G. Shields, thence north 45 east to northwest corner of Bartlett's 112-acre tract; thence with his west line to McCollough's slough; thence down the same to the Brazos river;
177 thence up the river to the beginning.

Tract number five, the same containing 105 acres out of the La Serda, on an island at the falls of the Brazos, and purchased by C. Jones from T. J. Chambers, and described in this deed.

Tract number six, containing about 100 acres: Beginning at southeast corner of survey sold by T. J. Chambers to H. Barry, occupied by Barry, at a stake, from which a mesquite 4 inches in diameter bears south 46 west 15 varas, a post oak 24 inches in diameter bears south 48 — 93 varas; thence north 45 east 168 varas to a stake, from which a post oak 7 inches in diameter bears south 16 east 19 varas, and an elm 10 inches in diameter bears south 33 east 45 varas; thence south 45 east 890 varas to stake in John Marlin's north line, from which a Spanish oak 15 inches in diameter bears north 65 west 14 varas; thence south 45 west 641 varas to stake in Marlin's north line; thence north 45 west 890 varas to stake in Kemp's south line; thence north 45 east 473 varas to beginning.

EXHIBIT F.

Field-notes of three tracts of land on the Chambers conflict conveyed by Ed. G. Hanrick, defendant, to Walter Gresham.

Tract number one, containing about 179 acres, begins at the southwest corner of Mrs. J. B. Barton's place, on Old river; thence down the river south 55 west 230 varas; thence south 38 west 150 varas; thence south 16 west 170 varas; thence south 20 west 560 varas to the Brazos river at mouth of Old river; — with its meanders south 17 east 140 varas; thence south 17 west 230 varas; thence east 11 east 70 varas; thence south 2½ west 180 varas from a point in the Churchill Jones west boundary line, from which an elm 20 inches in diameter bears north 8 varas; thence with said line north 62 east 1,450 varas to elm 24 inches in diameter from corner;
178 thence north 44½ west 1,185 varas to beginning.

Tract number two, containing about 640 acres, more or less, begins at the southeast corner of the Marlin town tract; thence due north 1,090 varas to corner of Reed's survey; thence due east with said Reed's survey 297 varas to corner of same; thence due north 260 varas to another corner of Reed's survey; thence due west 297 varas with Reed's line to the Marlin line of town survey; thence due north 250 varas to corner in said line; thence due east 1,025 varas to corner; thence due south 570 varas to corner in west line of Cap's survey; thence south 10 west 468 varas to another in said line; thence due south 1,820 varas to southwest corner of this survey; thence due west 1.576 varas to corner of Frank's plantation; thence north 45 west 348 varas to another corner of said plantation; thence north 45 west 465 varas to another corner of Frank's plantation; thence north 45 west 970 varas to corner of Frank's plantation in south line of said town tract; thence due east 1,230 varas with said town tract south line to beginning.

Tract number three, containing in all 1,133 acres, more or less, about 600 acres of which lie on the said La Serda grant, and less so much of the same as does not lie on said La Serda grant: Beginning at northeast corner of survey made for S. Parker on W. W. Lang's south line, thence north 55 east 3,037 varas to corner on road leading from Marlin to Waco and in W. W. Lang's south line; thence south $46\frac{1}{2}$ east 1,860 varas to corner in line of small survey made for Sam. Parsons; thence south 23 west 1,380 varas to corner or oak near the two-mile post on road leading from Marlin to Belton; thence south $50\frac{1}{2}$ west 700 varas to corner of 150-acre survey for W. O. Smith; thence north 45 west 1,314 varas to Smith's northeast corner; thence south 45 west 670 varas to Smith's northwest corner; thence south 45 east 1,264 varas to Smith's southwest corner; thence south $47\frac{1}{2}$ west 550 varas to northwest corner 179 of W. W. Wardlaw; thence south 46 east 211 varas to corner of same survey for Parker Brothers; thenee south $44\frac{1}{2}$ west 177 varas to corner of W. T. Nettle's place; then north $44\frac{1}{2}$ west 1,320 varas to corner in south line of Samuel Parker's survey; thence north 45 east 270 varas to southeast corner of said Samuel Parker's survey; thence north 45 west 1,150 varas with said Parker's east line to place of beginning.

EXHIBIT G.

Field-notes of three tracts of land conveyed by Ed. G. Hanrick to George E. Lane in the Chambers compromise.

Tract number one, containing 400 acres: Beginning at the center of the railroad on the north line of the Marlin 640-acre town tract, thence with said line to the Stoval tract, thence due north with the east line of said Stovall and Barry tracts six hundred and sixty-eight varas to the northeast corner of the Barry tract, thence due west 251 varas to east line of the tract originally sold by Chambers to Peters, thence due north with said line 130 varas to the northeast corner of said tract, thence north $19\frac{3}{9}$ west 409 varas to corner

in Bates tract, thence with the line of this tract 520 varas to the bed of a ravine, thence north 42½ east 490 varas to stake in prairie, thence north 13¼ east such a distance that a line from thence north 62 east to the railroad and to the place of beginning will contain 200 acres. Also 200 acres as follows: Beginning at the center of the railroad on the said north line of the said town tracts, thence due east with said town line to the west line of the said Scott tract, thence north with the west line of the Scott tract to the northwest corner of the same, thence east with the north line of the Scott tract to a point
where a line north 28 west to the center of a railroad tract and
180 with the center of the railroad to the place of beginning will
contain 200 acres, making 400 acres in all in said first tract.

Tract number 2, containing 200 acres, lying east of Marlin: Beginning at the northwest corner of a tract conveyed by Wilsford to said Geo. E. Lane, thence north 62 east 1,141 varas to a corner; thence south 28 east 807 varas; thence south 45 west 1,585 varas to the southeast corner of the Cops tract; thence with the east line of the Cops tract *thence with the east line of the Cops tract* 510 varas to stake for corner in the south line of said tract sold by Wilsford to Lane; thence east with said line 40 varas to a corner; thence with the east line of same tract north 1½ east 805 varas to the northeast corner of the same; thence with the south line of the same tract north 88½ west 359 varas to the place of beginning.

Tract number three, containing 2,228 acres: Beginning at the T. J. Chambers south boundary line of the five front leagues grant east of the railroad, at a point where said line crosses the railroad right of way, thence north 30 west with said right of way to the south line of Gresham's 649-acre survey; thence east to his southeast corner; thence north with his east line to the southeast corner of the Cops survey; thence east with the line of the Cops tract to the southeast corner of the same; thence north 45 east with the line of the 200-acre tract surveyed for said Lane and continuing in said direction a sufficient distance so that a line running south 45 east to the lower line of the Chambers survey will, with the aforesaid lines and the said lower line of the said Chambers survey, include said 2,281 acres, exclusive of the following-named tracts, two tracts of Austin Robinson, one containing 10 and the other 15 acres; one tract of Coon, containing 160 acres; a tract of B. F. Williams, lying on the lower line of the Chambers; also excluding a tract of
S. B. Barton, to be surveyed as follows: Beginning at the
181 upper corner of the Williams survet, on Sandy creek, thence
up the creek, with its meanders, to the center of the ford on the old Marlin and Parsons bridge road; thence to extend westward from Sandy creek with said road a sufficient distance so that a line running south to a point on lower line of the Chambers survey and thence northeast with the Chambers and Williams tract to the place of beginning will contain 300 acres; also excluding one tract of E. B. Mains, beginning where the Courtney league line crosses Sandy creek, thence up the creek 565 varas; thence north 60 east 1,000 varas; thence south 30 east 565 varas to the said Courtney league line; thence south 60 west with said line to the place of begin-

ning; also excluding 50 acres to David Barton and 60 acres to Mose Goddin.

EXHIBIT I.

Field-notes of the entire tract of land lost to the estate of Edward Hanrick, deceased, which includes all the tract of land described in said Exhibit- D, E, F, G, and H, the same being a part of said Chambers conflict described in said Exhibit C, the same also including that portion of said Chambers conflict which was conveyed by defendant Ed. G. Hanrick to said Lane, and including also that portion of the same which had been sold by the said Chambers and his administrators previous to said compromise, and in which said tract so sold the said Ed. G. Hanrick released all his right, title, and interest as aforesaid.

Beginning at the southwest corner of the Antanacio de La Serda grant, or the Brazos river, thence with the south line of said grant to the point where the same intersects the south line of said Chambers ten-league grant, thence with said Chambers line north 45 east to the most easterly corner of said 2,218-acres tract conveyed to the said Lane in said compromise, thence north 45 west with the most easterly line of same last-named tract to the north corner of
182 the same, thence south 45 west with the upper or north line of said tract to a point where the east line of said 200-acre tract conveyed to said Lane and described in said Exhibit G intersects the same, thence with said east line to the northeast corner of said 200-acre tract, thence with the north or northeastern and western boundary lines of said tract along the same to the point where its west boundary line intersects the north boundary line of said 640-acre tract conveyed to said Gresham and described in said Exhibit F, thence west with the north boundary line of said Gresham tract to there the same intersects the east line of a 40-acre tract sold by said Chambers to Scott, described in said Exhibit H; thence north and east around said Scott tract to where its east boundary line intersects the south line of the 400-acre tract conveyed by the defendant Ed. G. Hanrick to Lane in same compromise and described in said Exhibit H, thence around the eastern and northern boundary line of said 400-acre tract to where its boundary line intersects the line dividing said five leagues granted to said Chambers from his said five back leagues, thence north 45 west with said line to where it intersects the north line of said Antanacio de la Serda eleven-league grant, thence south 62 west with said line to a point on the east bank of the Brazos which is the northwest corner of said La Serda grant, thence down the Brazos with its meanders to the place of beginning, excluding, however, said tracts of land which were by the terms of said compromise excepted and reserved out of said 2,228-acre tract by the defendant in said compromise, to wit, said 160-acre Coon tract, said B. F. Williams tract, said E. B. Main tract, said David Barton tract, and said Mose Godden tract, which are fully described in said Exhibit G.

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Exhibit K.

Field-notes of the tract of land on the said Atanacio de La Serda eleven-league grant which were and have been sold by Edward G. Hanrick to innocent purchasers prior to the institution of said suit No. 14, etc., said tract not having been sold by way — compromise.

Tract number one, conveyed by Edward G. Hanrick to A. H. Riptoe on the 4th day of April, 1870, the same containing 89 acres: Beginning at the northeast corner of Soul's survey, thence south 60 west 1,148 varas; thence south 30 east 417 varas to the lower line of the said La Serda grant; thence north 30 west 460 varas to the beginning, said tract being platted on the map hereto attached and made a part of this bill and designated thereon as the "A. H. Riptoe 89" tract.

Tract number two, conveyed *to* Edward G. Hanrick to B. F. Williams on the 4th day of April, 1864, the same containing 80 acres: Beginning on the west bank of Big Sandy creek, where the north line of Courtney league crosses, thence south 60 west 817 varas to a stake, from which a post oak ten inches in diameter bears south 37 east 4 varas, and a post oak eight inches in diameter bears north 51 east 11 varas; thence north 28 west 540 varas to a stake, from which a post oak twenty-four inches in diameter bears south 47 east 15 varas; thence north 62 east 927 varas to the creek; thence down the creek to the beginning, said tract being designated on said map as the "B. F. Williams 80" tract.

Tract number three, conveyed by Ed. G. Hanrick to B. Coon on the 4th day of April, 1870, the same containing 160 acres: Beginning at a post oak 12 inches in diameter on south side of Marlin and Springfield road, a little east of the two-mile post from Marlin, thence north 28 west 1,000 varas to a stake, from which a post oak 12 inches in diameter bears south 21 east 10 varas, post oak 15
inches in diameter north 44 west 9 varas; thence north 62
184 east 950 varas to stake, from which an elm 8 inches in di-
ameter bears south 6 west 2 varas, another elm 8 inches in diameter bears south 39 east 3 varas; thence south 28 east 950 varas to stake, — a post oak 20 inches in diameter bears south 32 east 3 varas; thence south 62 west 950 varas to stake, from which a post oak 4 inches in diameter bears south 42 west 1 vara, and another 20 inches in diameter bears south 16 east 3 varas; thence north 28 west 850 varas to beginning, being designated as the "B. Coon 160" survey.

Tract number four, conveyed by Edward G. Hanrick to Sam. Bell on the 25th of November, 1869, the same containing 493 acres: Beginning at the southwest corner of a 138-acre survey for C. R. Long in the north line of Joseph Manifee's 640-acre survey, thence south 58 west with said line and the north line of Stephen Beasley's 1,300 varas to a stake, from which an elm 5 inches in diameter bears north 24 west 12 varas, another 10 inches in diameter bears south 26 east 900½ varas; thence north 64 west 980 varas to stake, from which mesquite 8 inches in diameter bears north 85 west 13 varas, and another 6 inches in diameter bears north 7 east 4 varas; thence north 62 east 1,220 varas to Big creek; thence up Big creek to the lower corner of C. R. Long's survey; thence with the west line of said survey south 59 east 400 varas, south 9½ west 650 varas, south 42½ east 707 varas to the beginning, the same being designated as the "Sam. Bell 498" survey.

Tract number five, conveyed by Edward G. Hanrick to C. R. Long on the 30th day of December, 1870, the same containing 138 acres: Beginning where the east line of the La Serda crosses Big creek, thence south 28 east with said east line 1,295 varas to the north line of the Joseph Manifee's 640-acre survey; thence south with said north line 460 varas to the corner or three small mesquites
trees; thence north 42½ west 707 varas to stake in bed of a
185 slough, from which an elm 6 inches in diameter bears north
27 west 2 varas, another 6 inches in diameter bears south 8 west 6 varas; thence north 9½ east 650 varas to stake, from which an oak 10 inches in diameter bears north 9 varas; thence north 60 west 400 varas to Big creek; thence up the creek to where the east line of the La Serda crosses; thence south 28 east 1,725 varas to beginning, said tract being designated on said map as the C. R. Long 138 survey.

Tract number five and a half, conveyed by Edward G. Hanrick to G. W. Barton on the 25th day of October, 1870, the same containing 31 acres: Beginning in east line of the La Sarda grant and in south line of a survey for B. J. Chambers 352 varas north 67 east from the southwest corner of said Chambers survey, thence south 28 east 920 varas with the east line of said grant to corner or post oak 30 inches in diameter; thence south 62 west 200 varas to corner in prairie, from which a mesquite 3 inches in diameter bears south 53 east 3 varas, ditto 4 inches in diameter bears south 65 east 4 varas; thence north 28 west 921 varas to stake in Chambers' south line; thence north 62 east 200 varas to beginning, said tract being designated on said map as the "G. W. Parton 30" survey.

Tract number six, conveyed by Edward G. Hanrick to Robert Smith on the 10th day of January, 1875, the same containing 285 acres in two tracts: The first, containing 65 acres, begins on the north line of a survey 90 varas south 60 west from his northeast corner, from which a mesquite three inches in diameter bears north 85 west 15 varas; thence north 30 west 1,210 varas to Big Creek stake, from which an elm six inches in diameter bears south 59 east 5 varas; thence south 30 east 1,130 varas to his corner; thence south 60 west 325 varas to beginning. The second tract, containing 220 acres,
begins where the south line of the La Serda grant crosses the
186 east line of Smith's home tract; thence north 62 west 922
varas to stake, from which an elm eight inches in diameter bears north 45½ west 34 varas and three elms eight, ten, and twelve inches in diameter bears north 67 west 43 varas; thence north 28 west 1,612 varas to stake, — mesquite three inches in diameter bears north 23 east 7 varas; thence south 62 west 920 varas to Smith's

east line; thence south 28 east 1,612 varas to the beginning, said tracts being designated respectively on said map as "R. Smith 65" and "220."

Tract number seven, conveyed by Edward G. Hanrick to M. S. Hunnicutt on the 4th day of April, 1870, the same containing 109 acres: Beginning at the southwest corner of the Soul survey in the east line of the Sessum league, thence north 80 west with said Sessum league 1,200 varas to the bayou in Big Creek bottom, thence north 60 east 852 varas, thence south 30 east to south line of the Soul survey, thence south 60 west 852 varas to beginning, said tract being designated in said map as the "W. H. Hunnicutt 189" survey.

Tract number eight, conveyed by Edward G. Hanrick to Ellis Stewart on the 21st day of December, 1874, the same containing 55⅘ acres: Beginning at the northeast corner of a grant to Nelson Denson, a double post oak bears north 60 east 9 varas; thence south 36 east 900 varas with Denson's line to corner on Big Creek bottom, from which a pecan 10 inches in diameter bears south 72½ east 5 varas; thence north 60 east 350 varas to west line of survey in name of Courtney; thence north 30 west with said line 900 varas; thence south 90 west 35 varas to beginning, said tract being designated on said map as the "Ellis Stewart 55" survey.

Tract number nine, conveyed by Edward G. Hanrick to J. T. Wilsford on the 2nd day of October, 1876, the same containing 100 acres: Beginning at the southeast corner of survey made for L. W. Goodrich, from which a hackberry tree 10 inches in diameter
187 bears north 70 east 53 varas; also one hackberry tree 8 inches in diameter bears north 67 east 53 varas; thence north 62 east 630 varas to Sandy creek; thence up said creek 830 varas north 28 west; thence south 62 west 680 varas to stake, from which a post oak 12 inches in diameter bears north 80 east 49 varas; thence south 28 east 830 varas to beginning, said tract being designated on said map as the "T. J. Wilsford 100" survey.

Tract number ten, being two separate parcels of land conveyed by Edward G. Hanrick to L. D. Forbes on the 14th day of November, 1876, the same containing 900 acres: The first part, containing — acres, beginning on the south line of the La Serda eleven-league grant 570 varas north 62 east from the southeast corner of a tract sold to Garrett, thence north 62 east 1,300 varas to stake, north 28 west 3,266 varas to stake in line of Manifee survey; thence south 62 west 1,153 varas to stake, — pecan 20 inches in diameter bears north 11 east 5 varas, marked X; thence south 28 east 900 varas; thence north 35 east 570 varas to a stake, from which a post oak 18 inches in diameter bears south 37 west 180 varas, marked X; mesquite 10 inches in diameter bears north 14 west 61½ varas; thence south 28 east 1,434 varas to stake 11 inches in diameter — bears north 7 east 5 varas; thence south 48 west 660 varas; thence south 28 east 1,100 varas to beginning. The second tract, containing 100 acres, begins in south of survey made for McKrent post oak 6 inches in diameter, from which a post oak 5 inches in diameter bears south 13 east 2½ varas; thence south 28 east 900 varas to

stake, from which a post oak 12 inches in diameter bears north 11 west 7 varas and a post oak 15 inches in diameter bears north 5 west 16½ varas; thence south 62 west 627½ varas to stake, from which a post oak 6 inches in diameter bears north 38 east 5 varas; thence north 28 west 900 varas to stake, from which post oak
188 8 inches in diameter bears south 46 west 7 varas and a post
oak 8 inches in diameter bears north 85 east 80 varas; thence north 92 east 627½ varas to the beginning, said tracts being designated on said map and marked "L. D. Forbs 4100," respectively.

Tract number eleven, conveyed by E. G. Hanrick to J. T. Wilsford on the 1st day of February, 1877, the same containing 20 acres: Beginning at the upper corner of a 100-acre tract conveyed by the said Hanrick to the said Wilsford on the 2nd day of October, 1876, on the west side of Sandy creek, thence south 62 west with the north line of said 100-acre tract 21 varas to the northwest corner of same to stake, from which a post oak 12 inches in diameter bears north 24 east 77 varas; thence north 62 east 780 varas to Sandy creek; thence down said creek to the beginning, containing 20 acres, said tract being designated on said map as the "W. J. Wilsford 20" tract.

Tract number twelve, conveyed by Edward G. Hanrick to R. J. Garrett on the 12th day of December, 1877, the same containing 218 acres: Beginning at a stake in south line of the La Serda grant, from which an elm 8 inches in diameter bears north 54½ west 34 varas and three elms, 8, 10, and 12 inches in diameter, bears north 67 west 49 varas, it being the southeast corner of a tract conveyed by the said Ed. G. Hanrick on the — day of ——, A. D. ——, to —— ——; thence north 62 east 850 varas with the south line of said La Serda grant to stake, from which a mesquit- 3 inches in diameter bears north 34 west 4 varas; thence north 28 west 1,317 varas to a stake, from which an elm 10 inches in diameter bears south 46 east 6 varas; thence south 79 west 809 varas to stake in Smith's east line; thence south 28 east 1,577 varas to beginning, said tract being designated on said map as "R. J. Garrett 218 survey."

Tract number thirteen, conveyed by Edward G. Hanrick to M. J. Fairy on the 3d day of January, 1880, the same contain-
189 ing 70 acres: Beginning at the southeast corner of a survey
for John Parsons, thence north 80 west 810 varas to Parsons' southeast corner, a stake, from which a post oak twenty-four inches in diameter bears north 87 east 43 varas; thence south 62 west 137 varas to stake in prairie; thence south 28 east 842 varas to stake, from which a post oak ten inches in diameter bears north 42 east 5 varas; thence north 62 east 475 varas to Brushy creek; thence up said creek to the beginning, said tract being designated on said map as the "M. J. Fairy 70" tract.

Tract number fourteen, conveyed by Edward G. Hanrick to A. D. Dwight on the 13th day of April, 1878, the same containing 217 acres: Beginning at the southwest corner of J. W. Gameson's tract in upper line of the La Serda, thence south 28 east 1,225 varas to stake in prairie; thence south 62 west 1,000 varas; thence north 20 west 25 varas; thence north 62 east 1,000 varas to place of beginning, said tract being designated on said map as the "A. D. Dwight 217" survey.

Tract number fifteen, conveyed by Edward G. Hanrick to Sarah Reed on the 18th day of April, 1878, the same containing 100 acres: Beginning on the east bank of said creek at an ash tree, from which a red oak ten inches in diameter, marked W, bears north 6 east 14 varas north 85 east 732 varas to corner, from which a post oak ten inches in diameter, marked B, bears north 22 east 4 varas; thence north 5 west 750 varas to corner, from which a post oak ten inches in diameter bears south 43 east 6 varas, marked Y, bears north 45 west 3 varas; thence south 85 west 732 varas to burr oak on creek, marked H, from which another burr oak bears north 55 east 30 varas; thence down the creek, with its meanders, to the place of beginning, the same being delineated as the "Sarah Reed 100" tract.

Tract number sixteen, in two tracts, conveyed by Ed. G.
190 Hanrick to R. J. Garrett on the 31st day of May, A. D. 1878:
The first tract, containing 218 acres, begins at a stake on south line of the grant, from which an elm 8 inches in diameter bears north 54½ west 84 varas, and 3 elms 8, 10, and 12 inches in diameter bears north 67 west 49 varas, it being the southeast corner of a 220-acre survey sold to Robert Smith; thence north 62 east 850 varas with south line of said grant to stake, from which mesquit, 3 inches in diameter bears north 34 west 4 varas; thence north 28 west 1,317 varas to stake, from which elm 10 inches in diameter bears south 46 east 6 varas; thence south 79 west 890 varas to stake in Smith's east line; thence south 28 east 1,577 varas to the beginning, the other tract containing 28 acres at the upper corner of 600-acre tract surveyed for Bob Smith, on the west side of Big creek or east side of Kechi creek, thence north 62 east 616 varas to stake, from which a post oak 18 inches in diameter bears south 14 west 8 varas; thence north 28 west 300 varas, from which a post oak 18 inches in diameter bears south 48 west 4 varas; thence south 62 west 400 varas to bank of creek; thence down the creek to the beginning, said tracts being delineated on said map and marked respectively there*in or* as the "J. K. Garrett 218 and 28" surveys.

Tract number seventeen, conveyed by Edward G. Hanrick to Thomas B. Watson on the 14th day of September, 1878, in two tracts: The first tract, containing 80 acres, begins at southwest corner of a survey of 100 acres sold to Wilsford, thence south 62 west, following the center of the road, 444 varas to large post oak; thence north 28 west 1,025 varas to stake, from which a post oak 12 inches in diameter, marked W on two sides, bears south 72 east 89 links; thence north 62 east 444 varas to northwest corner of said Wilsford survey; thence south 28 east with west line of said survey to the beginning. The other tract, containing 13 acres, begins at southeast
corner of said first tract, thence south 28 east 395 varas;
191 thence north 28 east 330 varas to the center of bed of
Big Sandy creek; thence up the center of the bed of Big

Sandy creek, meanders the same, to the southeast corner of the said Wilsford tract; thence south 92 west with the center of the road 630 varas to place of beginning.

Tract number eighteen, conveyed by Ed. G. Hanrick to W. M. Stahl on the 3d day of January, 1878, the same containing 107 acres: Beginning at the northwest corner of a survey made for Wm. Masey, thence north 30 west 820 varas to stake in prairie; thence north 62 east 320 varas to corner on Brushy to Bob Smith's northwest corner; thence south 30 east with his west line to northeast corner of said Masey 320-acre survey; thence south 60 west 750 varas to beginning, said tract being designated on said map as the "W. M. Stahl 107" survey.

Tract number nineteen, conveyed by Ed. G. Hanrick to W. H. Kinbrough on the 29th day of July, 1875, the same containing 150 acres: Beginning at the upper corner of a survey made for Sam. Parsons, thence north 58 west with Parsons' east line 1,360 varas to stake, from which a post oak thirty-six inches in diameter, marked R, bears south 85 east 15 varas; another, twenty inches in diameter, bears south 72 west 14 varas, marked K; thence south 28 east 1,032 varas to Big creek; thence down Big creek to the beginning, said tract being designated on said map as the "W. H. Kinbrough 150" survey.

Tract number twenty, conveyed by Ed. G. Hanrick to M. Levy and M. N. Rosenthal on the 31st day of November, 1878, the same containing 50 acres, more or less: Beginning at a stake in bed of Little Sandy, a cottonwood tree marked M bears north 50½ west 4¾ varas; thence south 62 west 700 varas to corner, from which elm marked V bears south 46¼ east 12⅔ varas; thence north 28 west 603 varas to corner, from which an elm marked X bears north 35
192 east 14 varas; thence north 62 east 550 varas to stake, from
which an ash twenty-four inches in diameter, marked A, bears north 71½ east 7½ varas; thence down the creek with its meanderings to the beginning, said tract being designated on said map as the "Levy and M. 50" tract.

Tract number twenty-one, conveyed by Ed. G. Hanrick on the — day of ——, A. D. 1879, to T. J. Wilsford in two tracts: The first tract, containing 1,227 acres, beginning at a stake on old Manchaca line, from — a double elm bears north 68 east 18.29 varas; thence south 43½ east 9.67 chains or 229.75 varas to center of three large mesquit-s; thence south 59 east 37.40 chains and 88.812 varas to stake in center of road; thence north 34 east 24.30 chains and 575.36 to corner of Wilsford's fence; thence north 34 east with Wilsford's fence to upper line of La Serda grant; thence south 62½ west with said line 39.22 chains and 63.186 varas to place of beginning. The other tract, containing 20 acres, begins at center of Taylor's tank, thence south 56 east 7.25 chains or 17.220 varas to stake in center of road; thence south 30 west with said road 14 chains and 33.264 varas to middle of bridge on Little Sandy creek; thence up the creek to the place of beginning, said tracts being designated respectively on said map as the "T. J. Wilsford 122 and 20."

Tract number twenty-two, conveyed by Ed. G. Hanrick to R.

J. Garrett on the — day of ——, A. D. 1879, the same containing 335 acres: Beginning at the southwest corner of a survey made for L. D. Forbs, thence south 62 west with south line of La Serda 570 varas to southeast corner of survey made for R. J. Garrett; thence north 28 west 2,931 varas to stake in bed of Big creek; thence up Big creek to north line of Manifee survey; thence with said line to northwest corner of said Forbs' survey to stake, from which a pecan
30 inches in diameter bears north 12 east 5 varas, marked X;
193 thence south 28 east 900 varas to stake; thence south 35
west 148 varas to stake; thence south 28 east 335 varas to
beginning, said tract being designated on said map as the "R. J. Garrett 335" survey.

Tract number twenty-three, conveyed by Ed. G. Hanrick to L. S. Forbes on the — day of ——, 1879, the same containing 150 acres: Beginning at the 7th corner of a survey of 330 acres for R. J. Garrett and described next above about 967 varas from the north line of the Manifee survey, thence north 35 east 718 varas to stake, from which a post oak 18 inches in diameter bears south 37 west 180 varas and a mesquit- 10 inches in diameter bears north 14 west 6½ varas; thence south 28 east 1,434 varas to stake, from which an elm 6 inches in diameter bears north 7 east 5 varas; thence south 48 west 660 varas to stake, from which an elm 4 inches in diameter bears north 72 east 9 varas; thence north 28 east to place of beginning, said tract being designated on said map as the "L. J. Forbes 150" survey.

Tract number twenty-four, conveyed by Ed. G. Hanrick to L. J. Cockrell on the — day of ——, ——, the same containing 54 acres: Beginning at a point where the north line of the Sessum league crosses Cedar creek, near a water oak 4 inches in diameter, thence north 60 east with said line 1,106 varas to stake, from which a triple mesquit- bears south 31 west 36 links; thence north 30 west 504 varas to the bed of Cedar creek; thence down the main channel of said creek to the beginning, said tract being designated on said map as the "L. J. Cockrell 58" tract.

EXHIBIT L.

Field-notes of the tracts of land on the said Pedro Zarza five-league grant and on the said league out of the eleven leagues granted to
Rafael D'Aguirie, which was sold by the said Ed. G. Han-
191 rick prior to the institution of said suit, not having been
sold by way of compromise.

Tract number one, the same containing 200 acres, conveyed by Ed. G. Hanrick to Matilda, J. W., and L. F. Bowman on the 14th day of January, 1870: Beginning at a stake on the bank of Cow bayou at the lower corner of James Curry's farm, from which a pin oak 8 inches in diameter bears south 76 west 5 varas, thence north 4½ west 710 varas to corner, thence north 75 east 972 varas to corner, thence south 4½ east 1,460 varas to corner on bank of Cow bayou, which is also Mrs. Wiggin's upper corner; thence up the said bayou with its meanderings to the beginning, the same being delineated on said map of the Zarza D'Aguirie grant held with, attached, and made a part of the petition and marked Exhibit No. 2, said tract being marked thereon as the "M., G W., and L. F. Bowman" survey.

Tract number two, the same containing 134 acres, conveyed by Ed. G. Hanrick to M. A. and L. Fizer on the 25th day of February, 1870: Beginning at the southeast corner of E. McCullough's survey at ash on bank of south prong of Cow bayou, thence down Cow bayou to its juncture with the north prong; thence up the north prong to the northwest corner of this survey, which is also the lower corner of this survey, a stake, from which a dead burr oak 14 inches in diameter bears south 15 east 5 varas and a red oak 12 inches in diameter bears south 66 west 13 varas; thence south 62 west 925 varas to a stake for corner in McCullough's east line, from which an ash 20 inches in diameter bears north 28 west 6 varas; thence south 28 east 730 varas to place of beginning, the same being marked on said map as the "Fizer 134" survey.

Tract number three, the same containing 138 acres, conveyed by Ed. G. Hanrick to N. B Maxey on the 4th day of March, 1870:
195 Beginning at the northwest corner of Graham's survey to stake in prairie, thence south 9 west 760 varas, crosses Cow bayou at 1,020 varas; intersecting E. McCullough's line, set stake for corner, from which a dead cedar marked fore and aft bears north 28 west 20 varas, and thence with McCullough's line south 28 east 525 varas to Nix's corner in said line; thence with Nix's west line north 62 east 450 varas to Graham's corner in said line; thence north 57 west with Graham's east line 210 varas to pecan marked fore and aft; thence north 5 east 1,000 varas to place of beginning, said tract being marked in said map as the "Maxey 138" survey.

Tract number four, the same containing 7¼ acres, conveyed by Ed. G. Hanrick to Sallie L. Riddick on the 14th day of September, 1870: Beginning at a post oak fourteen inches in diameter, thence north 28 west 85 varas to stake for corner in upper line of Zarza's 5-league tract, from which a post oak marked X bears south 85 east 7¼ varas; thence south 62 west with the Zarza line 302 varas to a stake for corner; thence due south 178 varas to stake for corner; thence north 28 east 464 varas to place of beginning, said tract being marked on said map as the "S. L. Riddick 7¼" tract.

Tract number five, the same containing 9¾ acres, conveyed by the said Ed. G. Hanrick to W. D. Gains on the 14th day of September, A. D. 1878: Beginning in the upper line of the Pedro Zarza five-league grant, near the residence of the said Gains and Mrs. Sallie L. Riddick, at a stake equally distant from two post oaks marked X, thence south 62 west with the upper line of the La Serda 339 varas to stake for corner; thence south 20 east 202 varas to stake for corner; thence north 50 east 241 varas to stake in prairie; thence due north 178 varas to place of beginning, said tract being marked on said map as the "M. D. Gains 9¼" tract.

196 Tract number six, the same containing five acres, conveyed by the said Ed. G. Hanrick to Cottonwood church on

the 22d day of March, 1870: Beginning at the northeast corner of 5 acres surveyed for Cottonwood school-house, thence north 15 east 100 varas to corner; thence north 75 west 120 varas to corner; thence south 15 west 42 varas to corner; thence to bank of Cottonwood branch; thence down said branch to upper corner of said school-house tract; thence with the line of school-house survey to beginning, said tract being designated on said map as the "C. C. 5" tract.

Tract number seven, the same containing 105 acres of land, conveyed by the said Ed. G. Hanrick to W. G. Ethridge on the 15th day of January, 1870: Beginning near the corner of the Featherstone field or the bank of Cow bayou or a box elder six inches in diameter, — bears north 67 west 1 vara; thence north 4¼ west 780 varas to corner; thence south 85½ west 730 varas to corner; thence south 4½ east 830 varas to corner or bank of Cow bayou or a walnut 5 inches in diameter, from which an ash 12 inches in diameter bears north 68 east 3 varas, and a mulberry 6 inches in diameter bears north 63 west 4 varas; thence down the bayou to beginning, said tract being marked on said map as the "W. G. Ethridge 5" tract.

Tract number eight, the same containing 150 acres, conveyed by Ed. G. Hanrick to Robert de Graffenread on the 18th day of November, A. D. 1878: Beginning at a china 6 inches in diameter, marked X, thence north 15 east 773 varas to stake in prairie; thence south 75 east 1,076 varas to stake in thicket; thence south 15 west 775 varas to stake in prairie; thence north 75 west 1,096 varas to beginning, said tract being marked on said map as the "R. de G. 150" tract.

Tract number nine, the same containing 118 acres, conveyed by Ed. G. Hanrick to L. F. Bowman on the 18th day of November, 1872: Beginning at Jones' southwest corner at stake on bayou, 197 from which an ash 6 inches in diameter bears north 50 east 3 varas; thence north 55 east with Jones' line 470 varas to his northwest corner, from which a cedar bears south 2,332 varas; thence north 72½ east 350 varas to a stake for third corner; thence north 17½ west 640 varas to a stake for northeast corner in thicket; thence north 75 west 580 varas to an elm marked X, 6 inches in diameter, on branch of Cottonwood; thence down Cottonwood to its junction with Cow bayou and down Cow bayou to the beginning, said tract being marked on said map as the "L. F. Bowman 118" survey.

Tract number nine and one-half, the same containing 100 acres, conveyed by Ed. G. Hanrick on the 10th day of December, A. D. 1870, to George Chumney: Beginning at the northwest corner of a tract occupied by S. Hyden, elm 4 inches in diameter bears south 46 east 6 varas, marked X; thence south 28 east 1,000 varas to stake in prairie; thence south 62 west 564 varas to stake, from which a cedar bears south 85 east 16 varas; thence north 28 west 1,000 varas to corner on prairie; thence north 62 east 564 varas to beginning, said tract being marked on said map as the "G. Chumney 100" tract.

Tract number ten, the same containing 186 acres, conveyed by

Ed. G. Hanrick to James, H. R., & R. H. Jones on the 7th day of October, 1875; Beginning at the southeast corner of the Mooreville tract, thence down the Brazos with its meanders to Mrs. Martin's upper corner on the Brazos, from which a burr oak 24 inches in diameter bears south 42 east 8 varas; thence south 62 west 510 varas to corner, from which an ash 8 inches in diameter bears north 40 east 5 varas; thence south 28 east 1,251 varas to stake, elm 6 inches in diameter bears north 16 west 4¾ varas; another marked X, 5 inches in diameter, bears south 6½ east 5 varas; thence 198 south 62 west 413 varas to southeast corner of Mooreville tract of 600 acres, from which a honey locust bears north 11 west 11 varas; thence north 28 west 2,225 varas to beginning, said tract being marked on said map as the "Jones 186" tract.

Tract number eleven, the same containing 235 acres, conveyed by Ed. G. Hanrick to R. H. & H. R. & James Jones on the 7th day of October, 1875: Beginning at the southwest corner of Mrs. Bowman's survey for southeast corner of this, thence north 4½ west with said Bowman's west line 1,760 varas to stake in thicket for northeast corner; thence south 72½ west 820 varas to stake for northwest corner, from which a cedar tree 7 inches in diameter bears south 28 east 32 varas; thence south 55 west 470 varas to stake on bank of Cow bayou, from which an ash tree 6 inches in diameter bears north 50 east 3 varas; thence down the bayou with its meanderings to the place of beginning, said tract being marked on said map as the "Jones 235" survey.

Tract number twelve, the same containing 403 acres, conveyed by Ed. G. Hanrick to L. Magee on the 8th day of April, 1875: Beginning at a point in west line of the Zarza where the upper line of a 320 — survey in the name of Bryant intersects the same, thence south 28 east 2,850 varas to corner of Zarza; thence north 62 east 800 varas to corner in prairie; thence north 28 west 2,850 varas; at 1,460 varas Rector's southwest corner to northeast corner of said Bryant's survey, which is in the line of the Rector survey; thence south 62 west 800 varas to the beginning, said tract being designated as the "Magee 403" survey.

Tract number thirteen, the same containing 228 acres, conveyed by Ed. G. Hanrick to Adeline Featherstone on the 25th day of November, 1875, it being a part of the Aguirre league: Beginning 199 at a stake on the lower line of the A'Guirrie, from which an elm marked X bears south 61½ west 103 varas; thence south 62 west with said league line 1,055 varas to stake or of Mill's branch, from which three mesquites bears north 50 west 3 varas; thence up Mill branch in a northerly direction, following its meanders, to stake in said branch, from which a honey locust bears north 41½ varas; thence south 10 west 1,151 varas to place of beginning, the same being designated on said map as the "Featherstone 220" tract.

Tract number fourteen, the same containing 120 acres out of the A'Guirie survey, conveyed by Ed. G. Hanrick to E. H. Featherstone on the 25th day of November, 1875: Beginning 87 varas south 15 east from Mrs. Jackson's corner, a stake, from which an elm bears north 15 west 2 varas, thence south 42 east 700 varas to corner in prairie; thence north 48 east 430 varas to corner, from which a mesquit- bears north 22 east 5 varas; thence north 12 west 1,040 varas to corner at fence, south 52 west 460 varas; thence south 68 west with Mrs. Jackson's farm to east line of her additional survey, south 15 east with Mrs. Jackson's claim to the beginning, said tract being designated on said map as the "Featherstone 120" tract.

Tract number fifteen, the same containing 74 acres, conveyed by Ed. G. Hanrick to E. J. Featherstone on the 25th day of November, 1875, out of the A'Guirie survey: Beginning in G. W. Featherstone's north line 164 varas from his northwest corner, thence north 21½ west 585 varas to corner, from which an elm marked X bears south 45 east 43 varas; thence north 68½ east 600 varas to corner, from which a — marked X bears south 46½ west 3 varas; thence south 21½ east 820 varas to corner in Mrs. Adeline Featherstone's north line; thence south 88¼ west to her northwest corner; thence west with G. W. Featherstone's north line to place of beginning, said tract being designated on said map as the "Featherstone
200 74" survey.

Tract number sixteen, conveyed by Ed. G. Hanrick to G. W. Featherstone on the 25th day of November, 1875, the same containing 104 acres: Beginning at the northwest corner of a survey for Adeline Featherstone, from which a locust bears north 42½ east 12 varas, thence west 500 varas to corner on Dry branch, from which a mesquit- 4 inches in diameter bears north 79 east 5 varas; thence down said branch with its main channel to its junction with Mill branch; thence up Mill branch with its main channel to the beginning, said tract being delineated on said map as the "Featherstone 104" survey.

Tract number seventeen, the same containing 250 acres, conveyed by Ed. G. Hanrick to Ruth Slaughter on the 4th day of August, 1872: Beginning 300 varas south 62 west, from which an elm — at the southeast corner of Hatch's field, *or* the line between the Zarza and Galinda grants; thence south 23 east 800 varas to stake; thence south 62 west 1,764¾ varas to stake; thence north 28 west 800 varas to stake in upper line of the Zarza 5-league tract; thence with said line north 62 east 1,764⅜ varas to the beginning, including the field cultivated by Gilbert Jackson, the same being designated on said map as the "Slaughter 250" tract.

Tract number eighteen, the same containing in the neighborhood of 100 acres, conveyed by Ed. G. Hanrick to B. J. Jacobs on the 18th day of August, 1875, it being all that tract or parcel of land bounded on the north by Hatch's survey, east by Gains' survey, south by Duty's survey, and west by Jacobs' survey: Beginning at northeast corner of Jacobs' 250-acre survey, on north line of Zarza, thence north 62 east with the Zarza line to Gains' northwest conner; thence with Gains' west line to southwest corner; thence with Duty's north line to the east line of said Jacobs' 250-acre
201 survey; thence to the beginning, said tract being designated on said map as the "Jacobs 100" tract.

Tract number nineteen, the same containing 246 acres, conveyed by Ed. G. Hanrick to H. J. Deering on the 5th day of September, 1875: Beginning at De Graffenried's east corner, from which a hackberry bears south 41 west 5 varas, thence north 15 west 300 varas to corner; thence north 62 east 810 varas to corner, from which an elm bears south 5 east 17 varas; thence north 32½ west 200 varas, branch, at 982 varas corner, from which bunch of elms bears south 65 east 14 varas; thence south 92 west 880 varas to corner; thence south 30 west 945 varas to corner; thence south 75 east 1,095 varas with De Graffenried's line to beginning, said tract being designated on said map as the "Deering 246" survey.

Tract number twenty, the same containing 60 acres, conveyed by Ed. G. Hanrick to Wm. C. Nix on the 16th day of January, 1871: Beginning at a stake in Cow bayou, from which a dead burr oak 13 inches in diameter bears south 15 east 3 varas, a red oak 12 inches in diameter bears south 62 east 13 varas, thence south 62 west 925 varas to stake in McCollough's farm, from which an ash marked fore and aft bears north 28 west 6 varas; thence with McCollough's line north 20 west 330 varas to stake; thence north 62 east 610 varas, from which pecan 30 inches in diameter bears southwest 2½ varas; thence south 28 east 280 varas to stake on Cow bayou, from which a water oak 10 inches in diameter bears north 84 west 4 varas, and a cottonwood 4 inches in diameter bears south 11 west 5 varas; thence down Cow bayou with its meanderings to beginning, said tract being designated on said map as the "Nix 60" survey.

Tract number twenty and one-half, the same containing 600 acres, conveyed by Ed. G. Hanrick to McCollough on the 22d day of June, 1886: Beginning at an ash on south bank of Cow bayou, an ash bears south 64 east 5 varas, thence south 28 east 2,225 varas 202 to stake in prairie, from which a locust bears north 11 west 11 varas; thence south 62 west 1,370 varas to stake, from which a hackberry 6 inches in diameter bears south 68 east 45 varas, an ash 5 inches in diameter bears north 22½ east 50 varas; thence north 28 west 705 varas to stake in south line of Zarza; thence south 61 west 50 varas to stake in said line; thence north 28 west 1,760 varas to stake on south bank of Cow bayou, from which a box elder eight inches in diameter bears south 71½ east 5 varas, a hackberry 6 inches in diameter bears south 28 east 5 varas; thence down the bayou with its meanders to place of beginning, said tract being designated on said map as the "McC. 600" survey.

Tract number twenty-one, the same containing 70 acres, conveyed by Ed. G. Hanrick to W. J. C. Graham on the 11th day of February, 1876: Beginning at northwest corner of a tract sold by Ed. G. Hanrick to —— ——, thence north 81 east 628 varas to corner on creek, an ash 4 inches in diameter marked X, from which a hackberry marked A bears south 21 west 4 varas; thence down the creek with its meanders to northeast corner of the tract deed to said Graham on the — day of ——; thence to the beginning, said tract being designated on said map as the "Graham 70" survey.

Tract number twenty-two, conveyed by Ed. G. Hanrick to H. J. Deering on the 13th day of January, 1877, the same containing 220 acres: Beginning at R. S. Conway's northeast corner, thence

north 15 east 700 varas to stake; thence north 30 east 948 varas; thence north 586 — to stake, from which elm bears south 9 west 40 varas, the same being on Frizer's south line; thence south 62 west with said Frizer's south line 53 varas north of north line of the Zarza, 760 varas to east prong of Cottonwood creek; thence with said creek on a base line of south 28 east 53 varas to the
203 Zarza league at Whitsett's southeast corner at a cottonwood 18 inches in diameter; thence south 62 west with said north league line 886 varas to West Cottonwood; thence south 15 east 735 varas to Argo's southeast corner, on Cottonwood; thence with meanders of the creek on a base line of south 38½ east 240 varas to the forks of East and West Cottonwood creeks; thence with the meanders of the main creek 6½ west 223 varas to Carroway's northwest corner, on creek; thence south 75 east with his line 505 varas to beginning, said tract being designated on said map as the "Deering 220" survey.

Tract number twenty-three, the same containing 100 acres, conveyed by Ed. G. Hanrick to W. K. Brandon: Beginning at southwest corner of a survey made for E. Brandon, at a rock for corners, thence south 62 west 324½ varas to stake in south line of said survey, thence north 28 west 1,310 varas to stake, from which a hackberry bears north 72 east 24½ varas 6 inches in diameter; thence north 62 east 324½ varas to a stake in Wiggins' line, from which a hackberry 6 inches in diameter bears south 10 west 4 varas, an elm 10 inches in diameter bears north 87 west 1½ varas; thence south 28 east 1,311½ varas to the place of beginning, said tract being designated on said map as the "Brandon 100" tract.

Tract number twenty-four, the same containing 106 acres, conveyed by Ed. G. Hanrick to S. McCarter on the 11th day of January, 1868: Beginning at a point where the north line of the Pedro Zarza crosses the east prong of Cow bayou, thence down said Cow bayou with its meanderings to the east line of the Littlefield survey, thence with the Littlefield line north 9 east 300 varas to the northeast corner of the Littlefield survey, thence with the Littlefield line south 85 east 562 varas to Argo's southwest corner, thence north 8 east 702 varas with Argo's line to his northwest corner on the Zarza line, thence south 62 west with the Zarza line to
204 the beginning, said tract being designated on said map as the "S. McCarter 106" tract.

Tract number twenty-five, the same containing 50 acres, conveyed to D. C. Miller on the — day of ——: Beginning on upper corner of said Zarza at a stake, from which a blackjack marked X bears north 58 east 3 varas, thence south 39 east, at 60 varas pass Duty's northeast corner, at 159 varas to corner in field, which is also one of Duty's corners; thence south 51 west 71½ varas to another of Duty's corners; thence south 39 east 541 varas with Duty's east line to corner, from which a post oak ten inches in diameter bears north 35 west 3 varas and marked X; thence north 62 east 425 varas to corner on east bank of a ravine, from which a post oak 12 inches in diameter bears south 35 east 6 varas; thence north 28 west 700 varas to the Zarza upper line, a stake, from which a blackjack 12 inches in diameter bears south 64 west 16 varas, said tract being designated on said map as the "Miller 50" survey.

Tract number twenty-six, the same containing 202 acres, conveyed by Ed. G. Hanrick to Ed. McColough on the 14th day of March, 1879: Beginning 100 varas north 28 west from northwest corner of McCollough's 184-acre survey in line of 100-acre survey, stake for corner, thence south 62 west 824 varas to west line of Zarza, ash 8 inches in diameter; thence north 28 west 1,385 varas with west line of tract, thence north 62 east 824 varas to stake in prairie, thence south 28 east 1,385 varas to beginning, passing McCollough's northwest corner at 85 varas, said tract being designated on said map as the "McC. 202" survey.

Tract number twenty-seven, the same containing 100 acres, conveyed by Ed. G. Hanrick to Ed., G. H., & G. W. Bowman on the 30th day of May, 1879: Beginning at Mrs. Bowman's lower
205 corner on said bayou at a stake, thence north 4½ west 1,148
varas to stake, from which ash 2½ inches in diameter bears south 92½ east marked XX, another marked X bears south 9¾ east 7 varas; thence north 86 east 540 varas to stake, from which an ash 14 inches in diameter bears south 5 west 8¼ varas; thence south 5½ east 828 varas to the bank of Cow bayou, thence up said bayou with its meanderings to the place of beginning, said tract being designated on said map as the "Bowman 100" tract.

Tract number twenty-eight, the same containing 152 acres, conveyed by Ed. G. Hanrick to Mary Argo on the — day of ——: Beginning at a stake in west line of said grant, being McCarty's northeast corner, thence along said northeast line north 62 east 1,284 varas to corner in Cottonwood creek, being one of Whitsett's corners, from which a pecan tree 16 inches in diameter bears south 15 east 2½ varas; thence south 15 east with Whitsett's line of the tract he bought of Surges 720 varas to corner, an ash on the west bank of Cottonwood creek, being also Graham's northeast corner; thence with Graham's north line south 80 west 625 varas to Graham's northwest corner; thence south 9 east 572 varas to a point in line where Graham's two surveys and Maxey's and this survey all corner, being Maxey's northeast corner; thence north 85 west 909 varas along Mann's line to the corner where Littlefield's and McCarty's survey-corner; thence north 8 east along said McCarty's line to northeast corner of said McCarty's survey, being the northwest corner of this survey, to place of beginning, said tract being designated on said map as the "Mary Argo 152" survey.

Endorsed: No. 52. Equity. Nicholas Hanrick *et al.* *vs.* E. G. Hanrick *et al.* Complainants' original bill in accordance with the order of court authorizing plaintiffs below to replead. Filed Nov. 29, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

206 In the United States Circuit Court at Waco.

Nicholas Hanrick *et al.*
vs. } In Equity.
E. G. Hanrick. *et al.*

The Answer of E. G. Hanrick, One of the Def'ts, to the Bill of Complainant of Nicholas Hanrick et al., the Above-named Pl't'ffs.

1st. To the first paragraph of said bill this def't says that the original petition filed in the dist. court of Falls county in this suit named as pl't'ffs therein Elizabeth O'Brien, of Wexford county, Ireland; Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whelan, Rob't Whelan, Bridget Whelan, Eliza Whelan, and Catherine O'Neil, joined by her husband Martin O'Neil, and that said petition named as def'ts E. G. Hanrick, Eliza M. O'Brien, and her husband, Philip O'Brien, and that said petition was in form and substance an action of trespass to try title and so indorsed as required by the laws of Texas relating to the trial of titles to lands, and that the equitable right to cancel the several deeds of Nicholas, Annie, and Ellen Hanrick was first set up by pl't'ffs' amended petition, filed March 8th, 1882, and this def't does not deny but admits that the parties, pl't'ffs and def'ts, to the present bill in equity filed in this court are as stated in said first paragraph, and that the said E. J. Gurley, Philip O'Brien, William Brady, John B. Sargent, Wharton Branch, and the estate of Eliza M. O'Brien, now deceased, were by the 2nd amended petition of the pl't'ffs herein, filed March 8, 1882, joined as def'ts in said suit, and that the said William E. Kendall was joined as def't by pl't'ffs' 7th amended petition, filed in said State court on the 9th day of July, A. D. 1885.

207 2nd. As to the matters stated in the 2nd paragraph this def't makes no contest and believes the same to be true as stated, and that this def't and his codef't, E. J. Gurley, are citizens of the State of Texas.

3rd. As to the matters stated in the third paragraph, this def't answers that Edward Hanrick died intestate in the State of Alabama on the — day of ——, A. D. 1865, unmarried and without issue, and the names of his surviving heirs are correctly stated, as this def't believes upon information which he accepts as true, although he has no personal knowledge of the facts except as derived from the testimony taken in this suit; and this def't further answers that at the time of the death of said Edmund Hanrick he claimed title to the following-described tracts of land in the State of Texas, viz:

One tract of eleven leagues of land, granted by the government of Coahuila and Texas on the — day of ——, A. D. 1833, to Antonacio de la Serda, situated in Falls county, save and except certain portions of said land conveyed by him.

Also a tract of five leagues of land, granted by same authority to Pedro Zarza, situated in Falls county, save and except certain portions of said land sold by him.

Also a grant of eleven leagues of land, made by the same authority to Rafial de Aguirrie, dated Oct. —, 1833, one league of which grant is situated in Falls county and the remaining ten leagues are situated in Williamson county, save and except certain portions of same sold by him.

Also a tract of one league of land, granted by same authority to
J. F. de Rumuzar, and a tract of one-half league, granted
208 by same authority to Andrew Weaver. Both of said last-named tracts are situated in Liberty county.

A more particular description of each said tracts and portions of same sold by the said Edward Hanrick is contained in Exhibit A, herewith filed and made a part of this answer; and this def't denies that any of said titles were of doubtful validity, and he expressly asserts as true that the aforesaid title to the said eleven leagues of land granted to Rafial de Aguirrie was and is a good and perfect title, issued in due and regular form by the former government of Coahuila and Texas, the then sovereign of the soil; that after the revolution which separated Texas from the Mexican government the said title was recognized as *as* good and valid by the proper authorities of the Republic of Texas, and that the said republic, as successor to the former government, claimed and in fact rec'd the amount due as the purchase-money for said grant; and this def't avers that the said Edward Hanrick had a regular and consecutive chain of title to all of said grant by mesne conveyances down to him all duly recorded, and that the supreme court of the State of Texas has judicially declared that said title was valid and free from suspicion, but this def't admits that before and at the date of the death of Edward Hanrick a considerable portion of the ten leagues of said grant which is situated in Williamson county was occupied and held adversely by various persons claiming title by virtue of adverse and conflicting locations, and this def't alleges that the same was true as to the remaining league, situated in Falls county, and as to the land conveyed by the said De la Serda title and the Pedro Zarza title; and this def't alleges that although the said Edward Hanrick had at the time of his death good and valid paper title to all of the said lands mentioned in the 3rd paragraph
of pl't'ffs' bill and more fully described in Exhibit A,
209 filed and made part of this answer, and as to said land was
seized in law, yet he had no seizen in fact except as hereinafter stated, but a large portion of each of said tracts (except two tracts in Liberty county, as to which this def't is not informed) *were* claimed and held under adverse titles, viz., head-right grants, certificate locations, pre-emptions, etc., and the grants to one T. J. Chambers, which covered a large part of the said La Serda grant. This def't admits that said Edward Hanrick, by his att'y and agent, entered upon a portion of the La Serda grant in 1858 and put one James Riddle in possession as tenant; that during the same year he, by his att'y and agent, entered upon the said Aguirrie league, in Falls county, and put one McCabe in possession as tenant, and that during the same year he also entered upon the said Zarza tract, by his att'y and agent, and made contracts as to parts thereof, and that

he did also during the same year enter upon the said ten leagues of the Aguirrie grant and attempt to take possession of the same.

And this def't alleges, notwithstanding the said entries, a large portion of each and all of the several tracts continued to be held adversely to the said Edward Hanrick at the time of his death.

And this def't alleges that, to wit, on the — day of ——, 1858, the said Edward Hanrick did by an instrument in writing appoint E. J. Gurley to be his true and lawful agent and attorney-in-fact, with power and authority to enter upon and take possession of said lands, to prosecute and defend all suits relating to the same, to make leases, to prevent trespass, to make compromises with adverse claims, to sell and in his name to make deeds, and generally to do all and anything in reference to said lands that he, the said Edward Hanrick, could do in person.

210 And def't alleges that the said E. J. Gurley did by virtue of said power enter upon each of said tracts of land and did place tenants in possession of parts of the same and did make the leases as above alleged and did thereafter from time to time make other leases, and did also, by virtue of his power, in connection with other counsel employed by said Edward Hanrick, prosecute and defend many and divers suits in the State courts and in the circuit court of the United States holding sessions in Texas.

And def't alleges that afterward, viz., on the — day of ——, A. D. 1861, the said Edward Hanrick made a new arrangement with his attorneys by which he employed William G. Hale, E. J. Gurley, and the law firm of Hancock and West to take charge of all of his business relating to all of his lands in Texas, to prosecute and defend any — all suits for the maintenance of his title and do all and everything that attorneys might properly do to uphold and maintain his rights to the lands claimed by him, and in consideration of which service so to be performed the said Edward Hanrick undertook and agreed to pay two thousand dollars as a cash fee to said Hale and Gurley each and a like sum to the firm of Hancock and West, and to give said attorneys also one-third part of all the land that might be recovered or held by said Hanrick, said engagements to continue until the business was concluded, which said contract was in writing and signed by said Edward Hanrick.

And def't avers that at the time of making the said contract there was then pending in the U. S. circuit court at Austin, Texas, two suits involving the title of said Hanrick to the said De la Serda grant; also one suit in said court involving the said Hanrick title to the said Pedro Zarza grant; also an unexecuted judgment
211 in the U. S. circuit court at Galveston in favor of said Hanrick
for the possession of the said ten leagues of the Aguirrie grant in Williamson county, which the def'ts therein were resisting by legal proceedings and otherwise. There were also numerous suits pending in the State courts in Falls county relating to the title and possession claimed by said Hanrick to said lands in Falls county.

And def't avers that the services so contracted for were necessary and the compensation agreed upon as aforesaid was reasonable and such as was customary in like cases, and that under and by virtue of said contract the said attorneys continued to act as the attorneys of said Hanrick, and as such were actively engaged in his business relating to said lands until his death, which occurred in 1865, as hereinbefore stated, the above-mentioned suits being still pending and undetermined and the titles and possession of said Hanrick to all of said tracts of land being still contested.

And this def't therefore answers the said 3rd paragraph of the pl't'ffs' bill, and says he does not deny that the parties therein named were related to the said Edward Hanrick, deceased, in the manner and degree stated, but believes the statement to be true also that the said deceased died intestate in 1865, and that he had a regular chain of paper title from the sover-ignty of the soil down to himself to all of the lands mentioned in said paragraph, but def't asserts that his estate in and to all of said tracts was incumbered by the various and adverse titles and possessions of many other persons, as hereinbefore stated, and the value of his said claim of title depended upon the successful issue of litigation inaugurated by him and pending and unsettled at his death, and was
212 further incumbered by his aforesaid obligation to his said
attorneys for their fee, and the residue only constituted his estate in fee simple, which descended to his heirs.

4th, 5th, and 6th. And answering the 4th, 5th, and 6th paragraphs of said bill this def't admits that the conveyances were made as stated in said 4th paragraph, and that the interest of Elizabeth O'Brien is now vested in William Brady and Wm. E. Kendall, and def't also submits to the decision of the court that aliens may take by descent, and may also cast descent upon their alien heirs, and that the pl't'ffs herein and Elizabeth O'Brien and this def't were entitled each to one-third part of the estate of the said Edward Hanrick, deceased.

And this def't says it is true as stated that administration on the estate of said Edward Hanrick, deceased, was long since closed, and *and* that no portion of the lands mentioned and referred to in the 3rd paragraph of pl't'ffs' bill have been partitioned among his heirs or parties holding under them.

And this def't says it is not true as alleged by the pl't'ffs that the said Elizabeth O'Brien was, on the — day of April, 1878, entitled as heir of said Edward Hanrick, deceased, or otherwise, to an undivided one-third of all of said lands, and it is not true as alleged that the pl't'ffs herein were, on the 1st day of January, 1877, entitled to an undivided one-third interest in said lands, or that they were in the peaceful posses-ion & enjoyment of the same or any part thereof, or that this def't or his codef't Gurley unlawfully entered upon said lands, but this def't avers the truth to be that soon after the death of Edward Hanrick, to wit, in the — of 1866, this def't did, by the advice of the said William G. Hale and E. J. Gurley, leave his home in the State of Alabama, of which
213 State he was then a native citizen, and came to Texas to
look after the business of said estate, which — then pressing and demanding immediate attention.

And def't was then advised by his counsel that under the laws of the State of Texas he was the sole and only heir to said estate situated in the State of Texas, and, although it was known that said deceased had relatives living in Ireland, it was the opinion of said counsel that they could not inherit any interest in said lands by reason of their disability as aliens; and def't avers that in entire good faith and placing full confidence in the advice of the said Wm. G. Hale, Esq., and of E. J. Gurley, Esq., and believing the same to be correct in law and in accordance with the ruling of the courts on that question, he assumed the burden of management and care of said estate and from thence until now devoted his time and energies to the same; and the def't did not then know that Philip O'Brien or any one else was in the United States representing the said alien relatives, or that they made any claim to share in said estate or were willing to share in the trouble and expense of maintaining the title and right of said estate to said lands; and this def't does verily believe that none of said alien heirs did in fact make any claim or consider that they had any claim until after the passage of the said "naturalization act of 1870" by the British Parliament, as stated in paragraph 5 of pl't'ffs' bill.

And def't avers that, acting under the advice of his counsel, he caused the aforesaid pending suits to be revived in his name as administrator and sole heir of said deceased and as such instituted and defended numerous other suits necessary to maintain the title and possession of the legal representatives of said estate.

214 And def't avers that while the disorders caused by the late war still existed the various courts of the State, including the U. S. circuit court at Austin, were open and ready to proceed with the business then and there pending, and the necessity for taking immediate action to preserve the interest of said estate was then pressing.

And this def't had learned of the employment of the said Hale and Gurley and Hancock & West by the said Edward Hanrick and the services performed by them previous to his death by virtue of said employment, and he therefore considered it his duty as the representative of the said deceased to carry out the contract made by him and to continue the employment of the attorneys selected by him.

And def't avers that all of said attorneys were able and experienced lawyers and of high standing in the profession, and from their knowledge of the chains of title and possession asserted by said deceased, as well as of the adverse claims thereto, were better prepared to act in the emergency than other lawyers new to the business, nor did this def't have any means or any sufficient resources to employ any other attorneys or to pay the said Hale, Gurley, and Hancock and West for their services already performed or to entitle him to demand of them the title papers, deeds, etc., placed in their hands by said deceased, nor was there any sufficient reason or any reason for withdrawing the said business from the said attorneys; all of which considerations and many others made plain the propriety of not interfering with the arrangements said deceased had made for the protection and maint*ai*nance of the rights asserted

by him and induced this def't to carry out the said contract made by him with said attorneys, and to continue the employment
215 of his chosen attorneys, and with that object in view def't
conferred with said Hale, Gurley, and Hancock and West, when, by the advice and concurrence of all the parties, it was agreed that Hancock and West and Mr. Hale should turn over all their interest in said contract to said Gurley, who should continue to act as the general attorney in said business and should as such receive the entire fee contracted for and should pay for the services of Mr. Hale, who agreed to continue to render such services as should be necessary, and should also pay for the services of other lawyers in place of Mess. Hancock and West, who withdrew, the fee being in their opinion inadequate.

And def't avers that he did in good faith, believing himself to be the sole heir to said estate, and as administrator of said estate and by the advice and consent of all of said attorneys contract and agree to convey to said E. J. Gurley one undivided one-third of the entire lands claimed by said deceased or the proceeds which should be recovered and held, and the said Gurley bound himself to give his personal attention & services in all the litigation and management of said lands and to pay all attorneys' fees and one-third of all other expenses to be incurred in the care and management of said lands; and def't did, on the — day of ——, 1870, in accordance with and as a part of said contract and agreement, make a deed to said Gurley conveying an undivided one-third of said lands.

And this def't further avers that said Gurley did continue his services in behalf of said estate, and that said Hale did also continue to render his services in behalf of said estate up to the time of his death, which occurred in A. D. 187–, and that said Gurley did also retain the services of W. W. Walton, of Austin, a lawyer of high standing, and of Goodrich and Clarkson, residing at Marlin,
216 besides other lawyers in special cases.

And def't avers that the said Gurley and the said attorneys employed by him rendered faithful and efficient services in behalf of said estate, so that the title and right of possession of said estate to nearly all of the said Pero Zara grant and a large portion of the said De la Serda grant was recognized and quieted before the institution of this suit by the pl't'ffs, and said attorneys did also, in the prosecution of the rights claimed by said estate to the said Aguirrie grant against one Jackson, who claimed by adverse title several thousand acres covered by said grant, obtain a favorable opinion of the supreme court of the State, holding said title to be good and free from suspicion, and were engaged in the active prosecution of other suits against various persons holding adverse possessions of portions of said grant before the pl't'ffs herein set up any claim to any part of said estate.

And this def't avers that the legal representatives of said estate were bound to carry out said contract made by the said deceased with said attorneys except so far as it might be modified by unavoidable circumstances or by mutual consent, and this def't, as the administrator of said estate and in good faith believing himself to be

the sole heir thereto, did, acting under the advice of counsel learned in the law, continue the employment of said lawyers, and by their advice and consent did in good faith make said deed of conveyance to said Gurley upon the consideration aforesaid, and the said Gurley has, by virtue of the facts herein alleged, continuously occupied said lands jointly wit- this def't and is now and was at the date of the institution of this suit entitled as against all the
217 heirs of said estate and their assigns to an undivided one-third thereof, but the def't says that if it should be held that his said deed made as aforesaid to said Gurley is not in itself binding on all the heirs to said estate and sufficient to convey their right in the lands attempted to be conveyed to said Gurley, then this def't avers that the substantial performance of the aforesaid contract made by said deceased with said lawyers and the transfer of said fee by them to said Gurley and the unchallenged occupation of said lands by said Gurley claiming right thereto for more than ten years is sufficient to vest the equitable and the legal title in him and to bar said heirs and their assigns from denying his right, nor would it be equitable for them to appropriate to themselves the benefit of his services without rendering compensation.

And def't avers that the services so rendered were beneficial and valuable to said estate; that owing to the condition of said estate and *and* the adverse claims of title and possession set up by numerous parties the said litigation was protracted and difficult & required the entire time and attention of the said Gurley and was reasonably worth the sum of five thousand dollars per year, and that the services of the said Hale and the said Walton and Goodrich & Clarkson were necessary and beneficial to said estate and largely aided said Gurley in finally maintaining said titles; all of which services were reasonably worth the sum of, to wit, $80,125.00, as per itemized state- in exhibit marked "C," all of which was paid and satisfied by said Gurley; nor has the said Gurley received for his said services since the year 1858 to this time, or for the aforesaid lawyers' fees paid by him, anything whatever except the said one-third interest in said lands, all of which is and should be a common burden and charge upon the interest of all the heirs of said estate
218 and their assigns and should be set off to said Gurley befo-e partition among said heirs.

And def't avers that said one-third interest so conveyed to said Gurley by this def't had then no marketable value, but was of the nominal value of one hundred thousand dollars, and that the successful issue of litigation and the general development of the country has increased the value of the same so that when this suit was brought the said one-third interest was of the value of two hundred thous*na*d dollars or thereabouts.

And this def't says that during the time he has had the care and management of said estate he has in good faith paid State and county taxes thereon, an itemized statement of which is shown in Exhibit "B," herewith filed, aggregating $13,904.18, and has also paid costs and other expenses of litigation, as shown in itemized statement in said Exhibit B, amounting to $4,881.89, all of which is a common burden and charge on said estate and was necessarily expended.

And this def't avers that at the time of the death of said Edward Hanrick and at the time that this def't undertook the care and management of his said estate all of the said lands claimed by said deceased were in a wild and unimproved condition except portions thereof occupied by various persons who claimed by adverse right, and that said lands produced no revenue to said estate, and that this def't did afterward and before the institution of this suit select portions of said lands and in good faith improve and cultivate the same and did also cause other portions of said lands to be improved and cultivated. A list of said improvement- *are* herewith filed, marked Ex-i*n*it- X and Y, showing value of same.

219 But that a much larger po-tion remained unimproved and uncultivated, and if it be true that an undivided part of said lands descended to pl't'ffs, yet this def't had the right to improve his part and to enjoy the revenues thereof, and pl't'ffs are not damaged thereby in the sum of $100,000.00 or in any sum whatever.

And def't admits that it is true that William Brady was, by virtue of a writ of possession issued out of this court on the — day of ——, 1887, let into joint possession with this def't of all of the unoccupied part of the lands belonging to said estate situated in Falls county, and def't also admits that said Brady has let the pl't'ffs into joint possession with him; and def't also admits that there are certain distinct and separate tracts and parcels of said lands which this def't had previous to the institution of this suit sold to third persons, the possession of which tracts or parcels of lands were not delivered to said Brady or pl't'ffs, but remains in the exclusive possession of said third persons or their assigns, severally, in accordance with their respective claims and were so held at and before the bringing of this suit.

And def't avers that in good faith, and believing himself to be the sole and only heir of said deceased, he did by his deeds convey to said third persons in severalty the said certain and distinct parts and parcels of said lands; that many of said deeds were made by him in settlement by way of compromise of adverse title and possession and purport only to release def't's right, and that many of said deeds conveyed lands therein described with covenants of general warranty, but def't denies that by any of said deeds he intended to convey or could in law convey or did in fact convey any greater or different estate in the said respective parcels of land than 220 by law was vested in him, or that he became bound by his said covenants of warranty to any person except the covenantees named in said suit. A list of said tracts conveyed and contracted to be conveyed and field-notes of the same are set out in Exhibit M, herewith filed and made part hereof, and as to said tracts of land this def't says that the several persons claiming and occupying the same have had and held the same respectively peaceably and adversely, cultivating, using, and enjoying the same and paying all taxes thereon and claiming respectively under deeds duly registered for five years or more.

And, further, this def't says that as to the said several parcels the aforesaid persons have severally had and hold the peaceable and adverse possession thereof respectively, cultivating, using, and enjoying the same for ten years and more; wherefore full and absolute title is vested in them respectively, and pl't'ffs are barred and said land cannot be partitioned in this suit.

And this def't says the pl't'ffs are not entitled to an undivided one-third of all the lands mentioned in paragraph 6 of pl't'ffs' bill, as stated by them in said paragraph, but the said right is limited by and subject to the facts stated in this answer.

And, further, this def't says that as to the claim made in this suit by Nicholas Hanrick, one of the pl't'ffs herein, to an undivided part of the said Pedro Zarza five leagues and for partition thereof the same ought not to prevail against this def't, because this def't avers that heretofore, to wit, on the — day of March, 1880, in the dist. court of Falls county, Texas, in a suit of trespass to try title then
and there pending, wherein one of the pl't'ffs in this cause,
221 viz., Nicholas Hanrick, was pl't'ff and one I. V. Eubank was
the original def't and this def't, as the vendor and warrantor of said I. V. Eubank, was also made def't, the right, title, and claim of the said Nicholas Hanrick to an undivided interest in the tract of five leagues of land situated on the west side of the Brazos river, in Falls county, Texas, and more fully described in Exhibit "A," hereto attached, and the right and claim of said Nicholas Hanrick to take by inheritance a portion of said tract of land was asserted by his partition therein filed, which, upon demurrer thereto by this def't and joinder therein by said Nicholas Hanrick, was adjudged by the court against the said Nicholas Hanrick and in favor of this def't, and, the said Nicholas Hanrick electing to stand on his pleading and declining to amend the same, the said court did order, adjudge, and decree that said Nicholas Hanrick take nothing by his plea and that the def't go hence without day; and def't avers that the full merits of said pl't'ff's claim of title to said land was at issue in said suit before said court upon contest made by this def't that said court had jurisdiction — aforesaid claim and contest and did hear and determine the same against said pl't'ff and in favor of the def't, which said judgement is final and conclusive. Whereupon this def't pleads said judgement in bar of said claim of Nicholas Hanrick to any portion of said Zarza tract.

And for further answer this def't avers that before the institution of this suit the pl't'ff Nicholas Hanrick did, to wit, on the 21st day of August, A. D. 1877, and the said pl't'ff, Annie Hanrick, did, to wit, on the 3rd day of April, 1878, and the pl't'ff Ellen Hanrick did, to wit, on the 3rd day of April, 1878, by their voluntary deeds severally executed by them, convey to Eliza M. O'Brien, wife of
Philip O'Brien, all of their several rights and interests in and
222 to all of the lands mentioned and described in Exhibit A,
attached to this answer, bring all of the several parcels of the land sued for by this pl't'ff in this suit and described in their petition, and the said Eliza M. O'Brien, wife of Philip O'Brien, became thereby seized of the several interests theretofore held by the

said Nicholas, Annie, and Ellen Hanrick, and, being so seized, together with an undivided interest conveyed to her by the said Elizabeth O'Brien, of Ireland, the said Eliza M. O'Brien, joined by her husband, the said Philip O'Brien, did bargain and convey, by deed dated on — day of November, 1878, to said William Brady an undivided one-half of all their interest by virtue of said deed made to said Eliza M. O'Brien by the said Annie and Ellen Hanrick and the said Elizabeth O'Brien, of Ireland, and the said Brady became thereby seized of said interest jointly with the said Eliza M. O'Brien and her said husband.

And afterw-rd, to wit, on the — day of April, 1883, in an action of trespass to try title brought by the said Eliza M. O'Brien and her husband, Philip O'Brien, and the said William Brady as pl't'ffs against this def't, as def't therein, in the circuit court of the United States for the northern dist. of Texas, at Waco, and in which suit the said Whorton Branch and John B. Sargent were also parties as intervenors, the adverse rights, claims, and titles of the said several parties to said suit in and to the land sued for in this action were involved and were presented by the pleadings and evidence therein before the court and jury, and in said suit this def't did deny and contest any right, title, or interest in the said pl't'ffs therein and in said intervenors, and did put all of said parties before a jury and require proof of their alleged rights,
223
and the said jury did return a verdict that said pl't'ffs were entitled to an undivided one-third of the lands sued for, and thereupon the said court did adjudge that said pl't'ffs, Eliza M. O'Brien and her husband, Philip O'Brien, and Wm. Brady, should have and recover of and from this def't and said Branch and Sargent an undivided one-third part of the Antonacio de la Serda grant, of the Zarza grant, and of the Aguirrie one league, being the same lands described in pl't'ffs' petition in this suit.

And this def't avers that said circuit court had then and there full jurisdiction of said cause, both as to the parties and of the subject-matter in dispute therein, and the full power to hear and determine all of the facts and law necessary to a full and final adjudication of all the rights of the parties to said suit in and to the land in controvercy therein, being the same as hereinbefore mentioned, and the def't avers that said suit was begun by original petition filed on the — day of Feb., 1880, by Eliza M. O'Brien and her husband, Philip O'Brien, and William Brady, as pl't'ffs, against this def't.

That the said Whorton Branch and John B. Sargent did on the — day of ——, A. D. 1883, with leave of the court, file their several petitions of intervention, and that the aforesaid judgement was conclusive upon all the rights which the s-id pl't'ffs therein asserted or could assert at the time of bringing said suit and at the time of said intervention.

And this def't also avers that *that* in said suit the said Whorton Branch and the said John B. Sargent, by their pleadings and proof, put in issue against this def't the same title and right by which they seek to recover against this def't in this suit, which said
224
right and title was by the aforesaid judgement denied and determined against them and in favor of the def't.

Wherefore this def't avers that neither the pl't'ff- nor said Branch or Sargent or said Brady, *ot* any person claiming under the said Eliza M. O'Brien, ought to recover from this def't the said interest or any part thereof, and in support of the statement above this def't will ex-ibit the record in said suit.

17*a*. And, answering paragraph 17*a* of pl't'ff-' bill, this def't says the statements therein are not true, but he alleges the truth to be that a large part of the lands mentioned in-said paragraph was, in fact, unoccupied and unimproved; that this def'8t, as well as his codef'8t, Gurley, had each improved at their own cost separate portions of the Zarza grant, aggr*i*gating not more than 4,000 acres, and used and occupied the same as farms and pasture, and had also several small improvements on the said La Serda grant used and occupied by their agents and tenants; and def't avers that, being so in the actual occupation of parts of said lands, he and his codef't, Gurley, did claim to be in legal possession to the bounds indicated in this paragraph; and this def't avers that he has not, nor has any one by his authority, knowledge, or consent, excluded the pl't'ff- herein or their agents or attorneys by threats of personal force or violence from any portion of the lands mentioned in said paragraph, nor has this def't -r any one by his authority, knowledge, or consent excluded the said pl't'ffs or their agents from any portion of said lands by numerous legal proceedings or suits of forceable entry and detainer. It is true that this def't has defended the suits brought against him by the pl't'ffs herein and has ever claimed right adverse to pl't'ffs, but def't says that soon after filing this suit,
225 and from time to time thereafter, the said pl't'ffs did contract
to sell po-tions of the lands mentioned in the said paragraph 17*a* to many and different persons; that said persons entered upon said several parcels so sold to them and still hold and occupy the same, so that pl't'ffs have by their own act obtained the relief which they now demand of the court.

18. And, answering paragraph 18 of said bill, this def't denies that the rents and profits of the said land referred to were during the period referred to of the annual value of $20,000.00, or that the said rents and profits were of any value, or that the said lands were capable of being exclusively used by any one until the same should be fenced or otherwise improved; and this def't denies that he had or enjoyed the exclusive use of said land, or that he in fact excluded the pl't'ffs therefrom, but avers the same to be that the same was open to the public and was used and occupied by all who chose without regard to ultimate right.

19 & 39. And, answering paragraphs 19 and 39 of said bill, this def't says the statements therein contained are not true, but he avers the truth to be that *that* he has not cut or authorized to be cut any growing timber on the lands mentioned in said paragraphs, nor has any timber been cut on said lands with his knowledge or consent, nor has he disposed of any such timber during the time mentioned except as follows, viz: During the spring of 1886 he did cause to be cut and sold 4,400 railroad ties of the value of $440.00 on a tract of 70 acres of land in the possession — one W. M. Mc-

Gauhey, and a tract of 70 acres in the possession of James Colin, and a tract of 50 acres in the possession — E. Parsley, and a tract of 100 acres in the posses-ion — J. J. Ellis, all of which tracts are adjoining each other on the said La Serda grant, and were
226 surveyed off and sold by the agent and attorney of the pl't'ffs herein about the — day of Jan., 1885, and from whom the above-named persons received of the said respective parcels, and so this def't says that pl't'ffs are not injured or damaged as alleged by them in said paragraphs 19 and 39.

4th. In answer to the pl't'ffs' 4th special interrogatory this def't says that it is not true that this def't and his codef't, Gurley, have during the period from the institution of this suit down to the time of the affirmance by the Supreme Court of the U. S. of the said judgement in cause No. 14 on the docket of this court prevented petitioners, the pl't'ffs herein, from taking possession of any portion of said lands described in Exhibit "A," attached to pl't'ff-' petition, under their claim of title from Edward Hanrick, deceased, but this def't avers the truth to be that the said pl't'ffs, by their agent and attorney, H. F. Ring, have during said period without the consent of this def't or his codef't, Gurley, made entry on the various portions of said land and put many different persons in possession of parts and parcels thereof under contracts of sale, and *and* that none of the said persons have been ejected from said land by this def't or his codef't, Gurley, but that said persons do now still occupy said tracts or have voluntarily abandoned the same; and def't says that in many instances the said pl't'ffs, by their agent and att'y, attempted by collusion with tenants of this def't who were occupying improved pa*tr*s and parcels of said lands to wrest by such means the use and value of said improvements from this def't, and have supported and maintained the said tenants in resisting the lawful demand of this def't.

227 5th. To the 5th special interrogatory this def't answers that he and his codef't, Gurley, did during the period mentioned claim the right to the exclusive possession of the land referred to in this interrogatory, and they did bring suits against one Wilson Hammers, one Bryant and Casey to eject them from improved farms, parts of the said land the possession of which they had severally received from this def't before the institution of this suit, but the def't avers that he has not by legal process or otherwise been able to eject them from said improvements, nor has he in any instance ejected from any part of said land the said pl't'ffs or any persons claiming under them, but such persons do now and have during the period mentioned occupy and *have* occupied po-tions of said land.

6th. To the 6th special interrogatory this def't answers that it is a fact that this def't denied the right of pl't'ffs or any one claiming under them to the possession of any part of said land, but he denies that he made any public threats in relation thereto, and he denies that he has put any persons claiming under pl't'ffs off from said land by forc*eabl*y entry, suits, or otherwise. It is true that this def't did bring an action of forcible — and detainer in the justice court of

Falls county on the — day of ——, A. D. 1885, against one W. M. McGaughy and James Cohn, who were then in possession of parts of the La Serda grant under contracts to purchase from pl't'ffs' attorney, and did recover a judgement against said persons, but this def't denies that the said judgement has been executed or that he has attempted to do so, and says that said persons are still in possession of said tracts.

228 22. In answer to the statements in paragraph 22 this def't says that it is true that at the time of the said death of said Edward Hanrick and ever since the said Eliza O'Brien and John and James Hanrick resided and continued to reside in Ireland, and the def't is not informed as to the date when the said Annie and Ellen left Ireland and came to America, but is informed and believes that it was some time since the death of said Edward Hanrick, and this def't had no personal knowledge as to when Nicholas Hanrick came to America except as derived from the testimony in this case, but upon that testimony he believes it to be true that he came to the United States and became a citizen thereof in 1852 and has since resided in the State of New York; and def't is not informed when Philip O'Brien, son of said Eliza O'Brien, came to the United States, but he believes that in 1870 the said Philip was residing in the State of New York, and that he was about that time by an instrument in writing appointed to be the attorney-in-fact of the said John and James Hanrick and of his mother, which instrument is this def't's source of information, and by the terms of which the said Philip had full and plenary power to represent the claims of the said John and James Hanrick and Eliza O'Brien, and def't believes it to be true that none of the above-mentioned persons ever resided in Texas or had any agent in Texas until after the year 1877, and def't says it is true he was appointed administrator of said estate in 1867 by the probate court of Falls county, but he says the said court had and exercised only nominal jurisdiction of said estate, and after the term of 1869 ceased to exercise any jurisdiction therein or to make any orders relating thereto and abandoned any and all control of the same.

229 And def't says that he did not as administrator receive into his possession any effects belonging to said deceased, either real or personal; that the papers and land titles belonging to said deceased this def't found in the possession of the lawyers employed by the said deceased, as stated in def't's answer to 1st special interrogatory; and this def't says that he had no personal knowledge of any relatives of said deceased in Ireland or had he ever heard the pedigree of the deceased spoken of among def't's immediate family; that his own fa*r*ther died when def't was quite a young child, and that he never heard the deceased speak on that subject, but def't knew that his father and the said Edward Hanrick *and* came from Ireland to the United States when young men and, he is informed, as early as 1867 or 1868 that they left in Ireland some brothers and sisters, and there *was* one or two nephews in the United States, but def't's most definite information was derived from the evidence taken in this cause, and he now believes the

said pedigree as stated in pl't'ffs' bill to be correct; and this def't denies that he suppressed or consealed the existence of said heirs or the knowledge of their right, or that in any act, thought, or purpose he was actuated by fraud, but he avers the truth to be that he was advised by counsel learned in the law that he was sole heir to said deceased, and that the alien relatives could not inherit because of the fact that they were aliens, and this def't did in good faith believe the law to be as stated and in good faith rely upon the said advice and in like good faith act upon the same.

23. Def't admits the facts stated in paragraph 23 to be true—that is to say, this def't admits that portions of said land were claimed by adverse parties by virtue of other titles and it was doubtful
which title would prevail, superior right depending upon
230 proof relating to the possession thereof.

24. Def't admits as true the facts as stated in paragraph 24 of pl't'ffs' bill with this qualification, viz., that said deed made by this def't to said Catherine Cavitt did not on its face purport to convey the title of Edward Hanrick, deceased, but only the title of this def't.

And as to said land the said Cavitt had*d* good title by and through one Michell Sessums, who had received from the government of Coahuila and Texas a grant of one league of land, which said tract of land had been in the exclusive possession of said Cavitt for many years.

25. The def't admits as true the facts stated in paragraph 25; that it is also true that said suits were revived in def't's name as sole heir as well as administrator; and it is also true that a previous trial of the same suits had in 1870 resulted in a verdict for the def't therein and which, upon a writ of error to the U. S. Supreme Court, brought by this def't was reversed upon questions not affe-ting the merits; that in the trial mentioned in paragraph 25 the full merits of the titles and possessions of both parties *was* before said court and jury and resulted in a general verdict for the def't in said *cua*ses, and this def't again prosecuted a writ of error to U. S. Supreme Court; and def't says that, although he sued out said writ of error with some hope of success, yet it was the opinion of eminent counsel and of the learned circuit judge who presided at the trial
that the record of said suits contained no reversible error.
231 Said trial took place in Jan., 1874, and the said writ of error
was pending in U.S. Supreme Cou*n*rt until October term, 1877, when it was dismissed for the want of prosecution; and def't says that said writ of error was also dismissed at the Oct. term, 1876, of said court, but upon application of this def't was by said court reinstated, and thereupon the compromise mentioned by pl't'ffs was effected.

30. And, answering paragraph 30 of pl't'ffs' bill, this def't says that it is true that on the — day of ——, 1877, all that po-tion of the said Ch*ma*bers grant conflicting with said La Serda grant which had not been previously sold by said Chambers or by his administrators was sold and conveyed to one Geo. E. Lane, and said Lane and this def'a't did compromise and settle the suit pending

and did exchange deeds, this def't by his deed to said Lane conveying a portion of the land in dispute and described in Exhibit R, attached to this answer, and the said Lane by his de*a*d did convey to this def't the land mentioned in his deed, which land so conveyed to this def't is particularly and accurately described in Exhibit U, attached to this answer, and is also shown by the sketch map marked D in said exhibit, and as to the facts stated in said paragraph 30 this def't admits the same to be true with the additional facts above stated.

26 and 27, 28 & 29. And as to the fa-ts stated in paragraphs 26, 27, 28, and 29 this def't demurs and declines to answer, because as to the said tracts of land therein mentioned no right thereto is asserted by the pl't'ffs herein.

31. And, answering paragraph 31, this def't admits as true the statement contained in first clause of said paragraph, and as
232 to the second clause of said paragraph he says that a court
of competent jurisdiction has adjudicated that as to said land covered by the conflicting grants to said Chambers and to La Serda, the said Chambers had superior title, and that the estate of Edward Hanrick, deceased, had no title, and this defendant believes the same to be correct, and also believes that further contest would have continued unfavorable to said estate and added greatly to the burden of the cost and expense, and this def't avers that said estate has or had no title or right to any part of said conflict except by and through the deed of Geo. E. Lane.

32 and 33. Answering paragraphs 32 and 33, this def't admits that he has at divers times before the institution of this suit sold and conveyed to many persons specific parts and parcels of said land besides releases made by this def't in compromise settlement of adverse claims, a list of which sale and field-notes and dates of same def't has attached to this answer, marked Exhibit "M," and is herewith filed as part hereof; and def't admits that pl't'ffs have acquiesced in said sales and do not now and have not, by suit or otherwise, claimed any right to said parcels against the several persons claiming the same.

34. Answering paragraph 34, this def't says that it is true that his codef't, Gurley, has in some instances joined him as grantor in making deeds to parties mentioned in paragraph 34, and that by their said deeds they attempted to convey to the said parties severally the lands therein described in some instances as by release of their right and title and in other instances with
233 covenants of general w-rranty, but he denies that in any of
said deeds he used words purporting to convey all the title of which the said Edward Hanrick died seized.

36. And in answer to paragraph 36 this def't refers to Exhibit M, attached to this answer, which contains a full list of lands sold by him so far as he can ascertain in the brief time he has had to prepare the same, and he asks that he be allowed to add any omissions that may be discovered by amendment.

37. And in answer to the statements contained in paragraph 37 he admits as true the facts stated in the first clause thereof, but he

denies that the said parcels referred to largely exceed, quantity and quality consid-ed, one-third of the lands of which the said Edward Hanrick died seized, exclusive of the lands included in said compromises referred to, and he denies that upon a partition of said estate the entire interest of this def't and his codef't, Gurley, will be absorbed by said lands so sold, and that all of the lands of said estate unsold before the institution of this suit will be left to the pl't'ffs and the assigns of Eliza M. O'Brien, because he avers that the interests of the parties to this suit is undivided and held in common and is coextensive with the limits of the lands to which all parties hereto had title and right of possession at the date of the institution of these partition proceedings, which def't avers to be March 8, 1882, and he denies that the above-mentioned tracts of land so severed from the joint estate and sold by this def't before the institution of this suit, in which severance and sale pl't'ffs have expressly acquies-ed, can be partitioned in this suit or in any
234 suit to which the owners and occupiers are not parties, and upon the issue presented by said paragraph 37 this def't pray- the judgement of the court.

38. The facts in paragraph 38 are answered in answer to paragraph 36.

40. And, answering the statements contained in paragraph 40, this def't says that it is true that def't Wm. Brady has since the issua*ln*e of the writ of possession referred to sold and conveyed certain specific parts and parcels of land belonging to said estate for his own exclusive use and benefit, and that pl't'ffs herein have acquiesced in the same, but this def't denies that he has acquiesced or consented thereto or that a partial partition has been thereby effected, but he does now and has ever claimed his undivided interest therein; and the def't avers that the said Brady has also by the consent and acquiescence of the pl't'ffs sold and conveyed large bodies of the lands belonging to said estate in Falls and Williamson counties before the issuance of said writ and during the pendency of these partition proceedings, and in which this def't has not and does not acquiesce, but still claims his interest therein.

Ans. to 3rd Int. And, answering that part of pl't'ffs' 3rd special interrogatory which relates to the Aguirrie ten leagues in Williamson county, this def't says: It is true that pl't'ffs have not in this suit prayed that said lands be brought into pa-tition, but this def't alleges that pl't'ffs have in this suit asserted title to said lands in the said Edward Hanrick, deceased, and have in this suit, by amended petition filed herein on the 8 day of March, 1882, put in issue their right and claim to said land and do still by
235 their present pleadings present said issue as to a part of the def'ts herein and upon the result or which their prayer for relief as against this def't depends.

And this def't says it is true that the pl't'ffs herein did also by suit filed in the district court of Williamson — against him on the — day of ——, A. D. 1878, finally recover in January, 1883, a judgement for an undivided one-third part of said ten leagues, and that pl't'ffs did in said suit claim by inheritance from said Edward Hanrick, deceased, and that said judgement was on appeal affirmed, and that at the time of bringing said suit against this def't a great number of persons were in possession of parts of said land, claiming under adverse titles, and that none of said adverse holders were made parties to said suit.

And this def't says that it is true that he did during the year 187– institute ninety or more suits in said dist. court of Williamson county against persons occupying portions of the said ten-league grant and claiming adversely to the title of said Edward Hanrick, deceased, and that he caused said suits to be brought in his name as sole heir, and that he did continue as such to prosecute the said suits and at his sole cost and expense, and although he had by the efforts of his counsel obtained a favorable opinion of the Supreme Court on the merits of said Aguirrie title in the suit styled Hanrick *vs.* Jackson, yet the said adverse occupiers refused to recognize said opinion or title and did continue to contest the said title in said suits.

And this def't is advised by counsel that although in said suits he was the sole pl't'ff and sued as sole owner, yet as such sole pl't'ff he would have been entitled to recover possession of all of each
tract sued for upon showing title to an undivided part, the
236 said def'ts therein being strangers to said title, and this def't
believes the law and facts so to be in this case, and that in the event of such recovery the said lands would have been liable to partition in this suit.

And def't says that it is true that the said def'ts in said suits alleged and swore that they believed said Aguirrie title to be forged, and that upon this issue a jury empanneled in said county found in favor of the def'ts in that suit, which upon appeal — by special judges appointed to hear the same affirmed; and this def't alleges that he did then proceed to take other and further testimony in said suits, viz., the testimony of Moses Austin Bryant and R. O. W. McManies, and did discover further and other documentary evidence, all supporting and establishing the validity and equity of said title, and did also obtain a change of venue in all of said suits to Travis county, where they are now pending for trial, free, as this def't hopes, from local prejudices.

And def't is advised by counsel that his title is good and free from suspicion, and that the Supreme Court has so held, and he has reason to believe and does believe that his right can no longer be successfully denied, and he here now challenges the fullest scrutiny of said title, and moreover he says that the pl't'ffs herein cannot be heard to assert its invalidity or to assert that this def't had no right or title to recover in said suits, because he says that the pl't'ffs herein did by their deed for valuable considerations during the pendency of said suit and during the pendency of this suit convey all of their interest in said grant to William Brady, one of the def'ts herein, and the said Brady did thereupon, to wit, during the
year A. D. 188– make conveyances to the said several def'ts
237 in said suits pending as aforesaid for the recovery of said
land held by them respectively, viz., to William Keliher,

Milner M. Gardner, Thos. J. Pace, F. L. Cook, J. M. Smith, Andrew Janak, John Namser, John Janak, A. R. Bowen, J. R. Bowen, A. J. James, H. L. Jackson, J. E. McQuire, G. W. Irvin, Joseph Cleveland, R. H. Price, T. B. Cochran, Isaac Crayton, W. K. Makemson, Moses Hall, Louis Eubank, Louise Eubank, J. W. Rudicil, W. D. Parish, Mansel M. Gardner, J. W. Wayman, —— Wildenhanser, G. L. Taylor, John Kaline, M. M. Gard*en*r, J. M. Robinson, J. D. Ashmore, W. L. Ashmore, J. A. Debson, C. E. Eubank, Cyrus Eubank, E. R. Taylor, J. P. Smith, S. J. Ake, all r*se*iding in Williamson county, and N. S. Walton, who resides in Travis county, said tracts aggregating about twenty thousand acres of land, and includes the most valuable parts of the estate of Edward Hanrick, deceased, a*j*d is of the value of twenty dollars per acre, and this def't avers that the above-named persons are now in possession of the said tracts so conveyed to them respectively, and by virtue of the said deeds, covenants, and agreements made by the pl't'ffs and said Brady claim all the right and estate in said land which the said Edward Hanrick had and held at the time of his death; that said deed- were made by said Brady for valuable considerations paid to him and secured to be paid to him by the said persons respectively, and that the said Brady did covenant and agree with the said vendees severally to warrant and defend the title to said land so conveyed by him against all persons claiming under Edward Hanrick, deceased, and did also contract and agree with said vendees that he would by proper proceeding- have said lands so partitioned that their titles should be perfected against this def't and his cosef't, Gurley, and the pl't'ff- herein 238 did consent and agree to the said a*gg*angement made by Brady and did afterwards, to wit, on the — day of ——, 188–, unite with said Brady (all or part of them) in a suit against this def't and said Gurley in the dist. court of Williamson county, Texas, to partition said lands in such a manner as to set off the land so sold as a part of the interest of the said alien heirs, and def't says it is true that pl't'ffs in said suit were compelled to take a nonsuit, and that subsequently said Brady instituted a similar suit in said court against this def't and his codef't, Gurley, which is still pending, as stated by pl't'ffs.

And this def't avers that he did in good faith institute the aforementioned suits to recover the said lands from the said occupiers before any claim was set up by said pl't'ffs and did in good faith incur large expense therein in court costs and taxes on said land paid by him, and he says that it was the duty of said pl't'ffs to aid in maint*q*ining the common title and to abide the result of this suit for the *portion* of the same, and the said land could now be partitioned in this suit.

And, in regard to the prayer of the pl't'ffs herein, this def't objects to the same because, 1st, the said prayer does not ask that the several and separate shares of the respective part owners of the lands to be partitioned be by decree of the court ascertained and fixed; 2nd, because it is not prayed that commissioners be appointed to make said partition; 3rd, because the proposed special instructions 1, 2, 3, 4, 5, and 6, as to the manner as to which partition should be

made by the said master or commissioners, are not in accordance with the rights of the respective part owners; 4th, because
239 the said special instructions propose a partition of said estate
by fragments, nor do the said instructions contemplate a partition of that part of the ten leagues of the Aguirrie grant in Williamson county of which the parties hereto were part owners at the time the partition proceedings were begun, and the said objection applies with reference to the two tracts of land in Liberty county; 5th, because it appears by the statements in the pl't'ffs' bill that, as to the said several distinct parts and parcels sold and conveyed by this def't before the institution of this suit, this def't has no right, title, or interest therein, and the said pl't'ffs have by their bill expressly disclaimed title to the same, nor could the court take jurisdiction as to said parcels in the absence of the said occupiers.

And, further, this def't objects to that part of the prayer of pl't'ff-asking that title be vested in them by decree of this court, because the said pl't'ffs as to this def't pray for a partition and a division of the common estate, baseing their right on a legal title by inheritance, and show no right in themselves to have any other or further title from this def't.

GOODRICH AND CLARKSON,
Att'ys and Counsel for E. G. Hanrick.

The foregoing is endorsed, to wit: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* In equity. The answer of E. G. Hanrick to a bill of complaint of Nicholas Hanrick *et al.*, pl't'ffs in said bill.

STATE OF TEXAS,
County of McLennan. }

On this 2nd day of Jan., 1888, before me personally appeared E. G. Hanrick, and made oath that he has heard the above answer read; he knows the contents thereof, and the same is true of
240 his own knowledge except as to matters which are therein
stated to be on information and belief, and as to these matters he believes — to be true.

E. G. HANRICK.

Signed and sworn to before me this January 2, 1888.

J. H. FINKS, *U. S. Comm.*

Filed Jan. 2, 1888.

J. H. FINKS, *Clerk.*

241 United States Circuit Court for the Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs. } In Equity.
EDW. G. HANRICK *et al.*

JANUARY THE 2ND, 1888.

Answer of the Defendant E. J. Gurley.

To the honorable judges of said court:

This defendant, complying with the *the* order of this honorable court requiring the defendants to restate and amend their pleadings had in this cause in the State court so — to make them conform to the rules and practice of this court, reserving all manner of benefit to himself of restating and amending his said pleadings more fully when, during the progress of this cause, it may properly be done, for answer to complainants' bill, as it has by leave of this honorable court been restated and amended, or to so much thereof as this defendant is advised is material for him to make answer to, answers and says:

He admits that Edw. Hanrick died intestate in the State of Alabama in the year 1865, leaving as his sole heirs his brothers James and John Hanrick and his sister Elizabeth O'Brien, all then living in Ireland, and his nephew, Edw. G. Hanrick, then living in the State of Alabama, and that upon the death of John Hanrick, intestate & without issue, in 1870, the said James Hanrick, Elizabeth O'Brien, and Edw. G. Hanrick became the sole heirs of the said Edw. Hanrick, deceased, and as such heirs entitled to share his estate in equal moieties; that James Hanrick died in 1875 and complainants are his sole heirs & legal representatives, and that by the several deeds and conveyances stated in complainants' bill Wm. Brady and other of the defendants have become and are, as alleged by complainants, the legal representatives of the interest of the said Elizabeth O'Brien in said estate, and that the said 242 complainants and the said defendants, togetner with the defendant Edw. G. Hanrick, are now the legal and equitable owners of the lands belonging to the estate of Edw. Hanrick, deceased, as stated and described in complainants' bill and exhibits, subject to the legal rights and equities originating in or growing out of the contracts, conveyances, and other acts of the said Edw. Hanrick during his lifetime and of his heirs and legal representatives since his death.

But this defendant denies that the complainants who own the interest of James Hanrick and the defendants who own the interest of Elizabeth O'Brien and the defendant Edw. G. Hanrick are, as alleged by complainants, the sole owners of the land to be partitioned in this cause. On the contrary, this defendant says that he is the legal and equitable owner of an undivided one-third interest in said lands for this, viz:

That for and in consideration of professional services rendered

by this defendant as an attorney-at-law and solicitor in chancery to Edw. Hanrick during his lifetime and at his instance and request in prosecuting and defending various suits brought by and against him for the recovery of said lands described in complainants' bill and other lands in the State of Texas and in prosecuting, defending, protecting, & perfecting his titles to said lands and in doing & performing for him and at his request the duties of his general agent & attorney in Texas, which said services began to be rendered in 1858 and were continued until his death in 1865, and for and in consideration of similar services rendered to the estate of said Edw. Hanrick from & after his death up to the present time at the instance & request of Edw. G. Hanrick, his administrator & only acting representative up to the time this suit was brought, and
in consideration of large sums of money paid & to be
243 paid by this defendant to other attorneys for their aid and
assistance in the rendition of said services, and for many other good and valuable considerations, the said Edw. G. Hanrick, one of the original heirs of Edw. Hanrick, deceased, & as such entitled to one-third of his estate, did on the 24th day of May, 1871, make, execute, & deliver to this defendant a good and valid deed, conveying to this defendant in fee simple an undivided one-third interest in and to the Atanacio de la Serda 11 leagues of land, the Pedro Zarza 5 leagues of land, and the Rafael de Aguirre 11 leagues of land, which said three several tracts of land are fully described in said deed and in the pleadings and exhibits of this cause and embrace all the lands sought to be partitioned by complainant; said deed was made by said Edw. G. Hanrick, as sole heir of Edw. Hanrick, in good faith and in full discharge of all the liabilities of said estate of Edw. Hanrick, deceased, to this defendant for his said professional services, by which said deed this def't became and is now the true & lawful owner of his said undivided one-third interest in said lands.

And therefore he sets up his said title in bar to complainants' bill in so far as it seeks to recover from this defendant his said undivided one-third interest, and thus far he prays to be dismissed with his reasonable costs & charges in this behalf most wrongfully sustained, and that he be held as a necessary party to the partition sued for in this cause & be allowed therein to assert & protect his said undivided one-third interest in said lands.

And this defendant, further answering, says that he ought not to be held to answer paragraphs 17*a*, 18, 19, 39, and interrogatory 3, and paragraph 5 of interrogatory 8 and paragraph 6 of the prayer of complainants' said bill, which seek to recover damages & rents
from this defendant, because he says complainants allege
244 throughout their said bill that he has no interest, right, or
title to any part of said lands, & nowhere therein do they recognize him as a cotenant with themselves or with any of the defendants or as having any interest in said estate of Edw. Hanrick, deceased, or as being entitled to any share in the partition of said lands, but, alleging as they do in effect that this def't is a stranger to the said estate, to the cotenancy, & to the said partition, they

wrongfully seek to recover from him as a mere naked trespasser the said rents & damages. Now this defendant says that until his said one-third interest is adjudged to him by this honorable court or set up by complainants in their bill in this cause this def't should not be required to answer to said claim for rents & damages, & of this he asks the judgment of this honorable court.

And this def't humbly prays the judgment of this honorable court whether it behooves him now to answer complainants' bill in so far as as it seeks to partition said lands & to adjust the rights & equities of the cotenants in said partition, or to make any other or further answer thereto than as aforesaid.

E. J. GURLEY,
For Himself.

THE STATE OF TEXAS,
McLennan County.

The defendant E. J. Gurley on oath says that the facts stated in the foregoing answer are true, and that the conclusions of law therein stated he believes to be true.

E. J. GURLEY.

Signed and sworn to before me this Jan'y 2, 1888. Witness my hand and seal.

J. H. FINKS,
U. S. Commissioner.

Endorsed: No. 52. Equity. Hanrick *vs.* Hanrick. Answer of E. J. Gurley. Filed Jan'y 2, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

245 In the Circuit Court of the United States for the Northern District of Texas, at Waco. In Equity.

NICHOLAS HANRICK *et als.*
vs.
E. G. HANRICK *et al.*

The answer of Wm. Brady, Philip O'Brien, and W. H. Patrick, administrators of the estate of Eliza M. O'Brien, deceased, defendants in the above-entitled cause, to the bill of complainants therein filed on the — day of November, 1887, respectfully represents—

1. That they admit the truth of all the allegations and averments in said bill contained except as to those contained in the certain paragraph therein numbered 15, it being unnecessary for these defendants either to admit or deny the charges of fraud therein made.

2. And these defendants adopt as their own all the allegations in paragraphs 1, 2, 3, 4, 5, 6, 6½, 16, 17, 17*a*, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47*a*, 47*b*, 48, and make the same a part of this answer.

And adopt the same as in a cross-bill against the defendants E. J. Gurley and E. G. Hanrick.

And these defendants specially adopt as their own all the pleadings of complainants in reference to said partition and specially pray that their undivided one-third interest in said lands described in said Exhibit A be set aside to them and the said master be instructed to divide said La Serda grant in such manner that the portion set aside to the said Hanrick and Gurley shall include said tracts of land conveyed by said Ed. G. Hanrick to said Cavitt, Baker, Lane, Gresham, and Jones and described in said Exhibits B, D, E, G respectively, and also include said tract of land conveyed by
246 said Ed. G. Hanrick to said parties named in Exhibit K,
which tracts are therein described; that in making the division the value of tracts of land conveyed and released to the said Cavitt, Baker, Lane, Gresham, and Jones shall be estimated as being worth the amount received by the said Ed. G. Hanrick in consideration of said compromises, including interest on the same at the rate of eight per cent. per annum from the first day of January next succeeding the date of each of said conveyances to the time when said partition shall be made, and that the value of the tracts described in Exhibit K be estimated as though the same were wild and unimproved lands, regardless of improvements thereon, and includes all of said lands described in Exhibit I.

4. That said portion assigned to the said E. G. Hanrick and E. J. Gurley shall also include the said tracts of lands situated in said La Serda grant sold by Ed. G. Hanrick and which he has contracted to sell, which are not described in said Exhibit K, but which his answer may disclose as referred to hereinbefore in section —, page —, of said petition, or which may come to the knowledge of said master, and also be estimated in value as though the same were wild and unimproved lands, so far as this can be done without prejudice to the rights of the cotenants of said E. G. Hanrick, preference being given to deeds of earliest date.

5. To divide respectively said league of land in Falls county granted to San Rafiel D'Aguirie and that portion of said five leagues of land granted to said Pedro Zarza of which the said Edward Hanrick died seized, which are described in Exhibit A, in such manner that the portion assigned to said Hanrick and Gurley shall include the lands sold by Ed. G. Hanrick and described in said Exhibit L, and also includes the tracts situated in said grants to
Aguirie and Zarza which he had sold and contracted to sell
247 previous to or since the institution of this suit, which are
described in said Exhibit L, but which his answer may disclose as referred to in section —, page —, of complainants' said petition, or which may come to the knowledge of said master, the same also to be estimated in value as though the same were wild and unimproved lands, so far as this can be done without prejudice to the rights of these defendants, preference being given to those tracts conveyed by deeds of earliest date.

6. And defendant William Brady specially represents that previous to the rendition of the decision of the supreme court of Texas, reported in the 54th Texas in the case of Hanrick *vs.* Hanrick, establishing the rights of the alien heirs of Edward Hanrick, deceased,

to inherit an interest in said lands described in Exhibit A, he purchased from his codefendants, the said Eliza M. O'Brien and her said husband, an undivided five thousand acres of land out of the lands pertaining to their interest in the estate of the said Edward Hanrick, deceased, together with the privilege of locating the same on any portion of the lands out of said estate which should be set aside to the said Eliza M. O'Brien and her husband, the location of the same to be selected by the said William Brady.

And the said Brady hereby elects to locate said five thousand acres of the said Eliza M. O'Brien's interest in said grant of eleven leagues granted to Atanacio de la Serda, described in said Exhibit A, or so much of said five thousand acres as will be sufficient to cover the said Eliza M. O'Brien's interest in said grant and wholly absorb the same, the residue, if any, remaining of said five thousand acres; the said Brady hereby elects to locate the said five thousand acres in the said Pedro Zarza five-league grant, described in said Exhibit A, and on the said Eliza M. O'Brien's interest in the same; and the said Brady prays that said master be di-
248 rected to partition said undivided interest between himself and the said Eliza M. O'Brien, according to his election, with reference to said five thousand acres.

7. And defendant William Brady further represents that in accordance with the example set by his codefendants, E. J. Gurley and E. G. Hanrick, as shown in complainants' bill, he also has selected and appropriated to his own use certain specific tracts and parcels of land out of said tracts described in said Exhibit A and other tracts, which his amendment to this bill shortly to be filed will show, and caused the same to be improved and has sold and conveyed the same by deeds of conveyance purporting to vest in the purchaser named in the same the entire title to the tracts of land described in said deeds of which the said Edward Hanrick, deceased, died seized, said tracts of land thus appropriated by this defendant and thus caused by him to be improved and sold and conveyed by him as aforesaid being then in Exhibit A, hereto attached and made a part of this petition, together with the names of the parties to whom the same has been sold as aforesaid.

And all the defendants joining in this answer pray for judgement against said defendants Hanrick and Gurley for their proportionate share of said rents and profits and for their proportionate share of said damages resulting from the destruction of said timbers, as set forth in complainants' said bill, and for all such other or different relief as to the court may seem right.

J. T. BRADY,
Solicitor for Defendants, William Brady,
W. H. Patrick, Philip O'Brien.

Filed Jan'y 2, 1888.

J. H. FINKS, *Clerk,*
By CHAS. H. LEDNUM, *Deputy.*

249 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Pending in the circuit court of the U. S. for the fifth circuit, in the northern district of Texas, sitting at Waco, in equity.

To the judge of said court:

Edward G. Hanrick, of Falls county and a citizen of the State of Texas, leave of the court having been granted, files this his first cross-bill in the above entitled and numbered cause against Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, Eliza Whelan, Catherine O'Neil, E. J. Gurley, Philip O'Brien, William Brady, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, dec'd, all of whom are parties in the above mentioned and entitled pending suit.

And your petitioner, humbly complaining, showeth unto your honor that heretofore, to wit, on the — day of December, 1865, Edward Hanrick departed this life intestate and without ever having been married.

That at the time of the death of the said Edward Hanrick he claimed to have title to the lands mentioned in plaintiffs' bill of complaint on file in this suit.

That he left surviving him your petitioner, the only son and heir of his deceased brother, Philip, a natural-born citizen of the State of Alabama; also two brothers, John Hanrick and James Hanrick, and a sister, Elizabeth O'Brien, the last three named being aliens and subjects of the Queen of the United Kingdom of Great Britain and Ireland.

250 That afterwards, to wit, A. D. 1871, the said John Hanrick died intestate in Ireland and unmarried and without issue.

That afterwards, to wit, A. D. 1875, the said James Hanrick died intestate in Ireland, leaving his children, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, Catharine O'Neil, and his grandchildren, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Elizabeth Whelan, his only heirs, the last five named being children of his deceased daughter, Mary, all of said children and grandchildren being natural-born subjects of the queen.

That afterwards, viz., August, A. D. 1877, the said Nicholas Hanrick did, by his voluntary deed, convey all of his interest in the lands hereinbefore mentioned to the said Eliza M. O'Brien.

That afterwards, to wit, April, A. D. 1878, the said Annie Hanrick did, by her voluntary deed, convey all of her interest in the same lands to the said Eliza M. O'Brien.

That on, to wit, April, A. D. 1878, the said Ellen Hanrick did, by her voluntary deed, convey all of her interest in same lands to the said Eliza M. O'Brien.

That all of said conveyances were severally made in trust for the benefit of the respective grantors therein, it being agreed at the time said conveyances were made that the said Eliza M. O'Brien and her husband, Philip O'Brien, should cause suit to be brought in the name of said Eliza M. O'Brien against your petitioner to recover the undivided interest so conveyed, and that the said Eliza M. O'Brien should recover said interest when recovered, less the *pro rata* share of expense incident to said litigation, and said deeds were made upon that express consideration, which said trust was unknown to your petitioner until long after the institution of this suit.

251 The said deeds being upon their faces for valuable consideration and the said trust being secret.

That on, to wit, the — day of October, 1878, the said Annie, Ellen, and Nicholas Hanrick did, by their joint obligation, bind themselves to convey an undivided one-half of their interest to Zuckerman.

And did afterwards, viz., the — day of Feb., 1879, by their joint deed, convey to W. C. Belcher and H. F. Ring an undivided one-half interest, subject to the aforesaid bond to Zuckerman, said deed made in consideration of legal services of said Belcher and Ring to be rendered in recovering interest of grantors in the said Hanrick estate.

That afterwards W. C. Belcher and H. F. Ring did, by their several deeds, dated respectively Feb. 22nd, A. D. 1884, and July 20th, 1882, convey all their interest in said lands to William Brady.

The said W. C. Belcher and H. F. Ring having prior to that time, to wit, Jan. 1st, 1879, acquired all the interest of the said S. Zuckerman in said land; that on, to wit, the 23rd day of April, 1878, the said Eliza M. O'Brien, joined by her husband, Philip O'Brien, conveyed to Nell B. Carpenter an undivided one-fourth of the interest acquired by the said deed of Nicholas Hanrick.

That Feb. the 4th, 1882, the said Eliza M. O'Brien, joined by her husband, Philip O'Brien, conveyed to one Duncan Cameron all the remaining interest acquired by the deed of Nicholas Hanrick not previously conveyed to Nell B. Carpenter, the said conveyances being in trust for Wm. Brady, as your petitioner believes and so charges; that on, to wit, the — day of Feb., 1878, the said Philip O'Brien and his wife, Eliza M. O'Brien, claiming title and right to an undivided three-fourths interest in the lands hereinbefore mentioned, to wit, the interest of John Hanrick, James Hanrick,
252 and Elizabeth O'Brien, as heirs of Edward Hanrick, deceased, did, by their deeds, apparently good and sufficient on their face, convey to John B. Sargent and Wharton Branch an undivided three-fourths of the above-mentioned three-fourths of said lands.

That on, to wit, May the 11th, 1878, Elizabeth O'Brien did, by her voluntary deed, convey all of her interest in same lands to the — Eliza M. O'Brien; that on, to wit, the 27th day of November, 1878, Eliza M. O'Brien, joined by her husband, Philip O'Brien, did, by a deed of that date, convey to William Brady an undivided one-half of all the undivided interest in the said Hanrick estate that was conveyed to the said Eliza M. O'Brien by virtue of the deed of Eliza O'Brien, of Ireland, and the deed of Annie Hanrick and the deed of Ellen Hanrick, being the same deeds hereinbefore mentioned; that the deeds to the said Brady *wis* made in consideration of his contract and agreement of same date, binding himself to have said deeds recorded and to bring suit at his own expense to recover said undivided interest, and petitioner alleges that said deeds to Branch and Sargent were upon the same consideration and purported to convey same interest as were subsequently conveyed to Brady.

That at the time of the death of said Edward Hanrick, in 1865, he claimed to own the several tracts of land situated in the State of Texas and described in Exhibit A, page- 1 to 19, attached to the answer of this petitioner as defendant in this cause.

That said Hanrick did have paper title to said lands good and sufficient upon their face to vest in him the absolute fee from the sovereignty of the soil.

That, notwithstanding his claim of title and *and* its validity, much the greater portion of said lands was adversely claimed
253 and 'occupied by other persons, who kept him ousted and ejected from said lands.

That previous to the death of said Edward Hanrick he had caused numerous suits to be instituted in the State courts of Texas, as well as in the U. S. courts, to establish his rights and to obtain possession of said lands and oust the said adverse claimants therefrom.

That the said Edward Hanrick employed the law firms of Hancock & West, E. J. Gurley, and W. G. Hale to take charge of his land business in Texas and prosecute and defend all suits relating — the said lands, said employment to continue until the business should be settled, and as compensation he agreed to give said Hancock & West, Hale & Gurley the sum of six thousand dollars in money and one-third undivided part of all the lands that should be recovered.

That previous to the death of the said Edward Hanrick the said attorneys rendered valuable service under said contract and instituted and prosecuted many suits relating to the title and possession of said lands, which said — were still pending at the date of the death of the said Edward Hanrick.

That after the death of the said Edward Hanrick your petitioner, being advised by counsel learned in the law that the said John and James Hanrick and Elizabeth O'Brien could not inherit as heirs-at-law on account of their disabilities as aliens, left his home in Alabama and came to Texas to take charge of the said estate, which he did in good faith, bel*ei*ving himself to be sole heir, and as such took out letters of administration on said estate, and acting under advice of counsels caused the said pending suits to be revived in his name as the administrator and sole heir, and did as such continue to prosecute the same, and did also institute, prosecute, and defend
254 numerous other suits relating to said land.

That in conducting the said litigation the said Hancock & West and W. G. Hale, Esq., and E. J. Gurley continued to render such legal services as were contemplated by said contract until afterwards, viz., A. D. 1870, when the said Hancock & West and W. G. Hale, Esq., with consent of petitioner, transferred their fee to E. J. Gurley, Esq., he agreeing to pay W. G. Hale for his service in money, and said Hale agreeing to continue to render services as before, and the said Hancock & West withdrawing from said litigation, a-d the said E. J. Gurley became thereafter the leading counsel and entitled to the entire fee contracted for as above and responsible to W. G. Hale and such other attorneys as should be employed to aid in said business for the fees to become due to them; that, viz., on the — day of — month, 1870, petitioner did in good faith, bel*ei*ving himself to be sole and only heir to said estate, by the consent of said Hancock & West and said Hale, ma*k*e a deed conveying to said Gurley an undivided one-third part of all said lands; the said Gurley as a part of said transaction and in consideration of said deed did bind himself to render his personal service in all of said land litigation and to pay said William G. Hale and all other lawyers necessary to be employed for their service in and about said litigation; that said Gurley did employ other counsel to aid him and said Hale in conducting the said litigation, and after long, expensive, troublesome litigation the right and title of said estate to nearly all of the said Zarza five leagues *was* finally established by a decree of the U. S. court at Austin, A. D. 1870, and a large part of the said La Serda eleven-league grant was also recovered for said estate. The field-notes of said lands are set forth in exhibit attached to the answer of your petitioner as defendant in this case.

255 That petitioner and his counsel attempted by negotiation to settle the title of said estate to the said grant of ten leagues in the name of R. D. Agurrie situated in Williamson county and one league of same grant in Falls county, and had, previous to 1874, great promise of success, and had been able to put a tenant, one James, in possession of the ten leagues, and had contracted to sell several small parcels thereof to squatters on said land, and had good reasons to expect and did expect that the rights and titles of the said estate of Edward Hanrick *was* in a fair way to be recognized, when, on the — day of ——, A. D. 1874, one A. M. Jackson, alleging that the original grant to said Agurrie was invalid, located valid land certificate conveying the entire one league in Falls county and several thousand acres of the ten leagues in Williamson county, which action also induced many other persons to locate other certificates on said ten leagues and to file pre-emption and homestead claims thereon and to set up claims adverse to petitioner.

That petitioner filed suit against said Jackson, and after protracted and expensive litigation obtained final judgement against him for both tracts of said land.

That many other persons claiming and occupying parcels of said tracts refused to acknowledg*ed* the validity of said title, notwithstanding its establishment by said judgement, and continued to hold adversely to petitioner; whereupon your petitioner brought several suits against adverse claimants to recover portions of said lands in

Williamson county, said suits being filed on the — day of ——, A. D. 1877.

And petitioner further shows a considerable portion of said Aguirric ten-league grant had in 1874 long been occupied and claimed under adverse titles, certificates, locations, and homestead
256 claims, and as to such portions, aggregating ten thousand acres or thereabouts, it was and is doubtful if said adverse claimants could be ousted by reason of their said possessions and limitation, which petitioner was and is advised by counsel will bar his right, but as to much the greater part of said ten-league grant, viz., twenty thousand acres and more, there were no adverse claims originating prior to 1874 and no possession adverse to your petitioner sufficient to bar his right; which said suits in Williamson county were still pending and undetermined, when, in December, A. D. 1878, the plaintiffs in this suit and William Brady, Philip O'Brien, Eliza M. O'Brien appeared and asserted claims to two-thirds of said estate by virtue of the right of said James Hanrick and Elizabeth O'Brien and alleging descent cast upon them as heirs, notwithstanding their alienage.

That petitioner did, in good faith and acting under advice of counsel, deny any right in said aliens or in those claiming under them; and thereupon the said plaintiffs, Nicholas Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, Eliza Whelan, and Catherine O'Neil, instituted numerous actions at law against your petitioner to recover their alleged interest, viz, in the district court of Falls county, filed December, 1878, to recover their alleged interest in said lands situated in Falls county, and in the district court of Williamson county to recover their alleged interest in said lands situated in Williamson county, and the said Nicholas Hanrick also brought a separate suit in his own behalf, in which he set up title in himself to an undivided one-half interest in the said Zarza five-league grant in Falls county and made one Eubanks defendants thereto, and in which suit this petitioner appeared as warrantor of said Eubanks and made defense.
257 In said suit it was adjudged in substance and effect that said Nicholas Hanrick had no right or title to any part of the Zarza tract, which said judgment is final and conclusive against said Nicholas Hanrick. Said suit was filed on the — day of ——, A. D. 1880, in the district court of Falls county, which court had full power and jurisdiction of said cause, and the said William Brady, Eliza M. O'Brien, and Philip O'Brien also brought a separate suit in the U. S. circuit court at Waco against your petitioner to recover their alleged interest in the said lands situated in Falls county, and a similar suit in the U. S. circuit court at Austin to recover their alleged interest in said lands situated in Williamson county, both of said suits being entered on the law dockets of said courts, respectively, on or about Feb., A. D. 1880; that afterwards the said suit in said circuit court at Austin was dismissed by said Brady *et al.* at their cost.

That said suit in said court at Waco remained pending on the docket of said court until the — day of ——, A. D. 1883, at which time the said Brady and O'Brien and wife recovered judgement against this petitioner for an undivided one-third of said lands in Falls county.

That plaintiffs in said suit in district court of Williamson county, viz., Nicholas Hanrick *et al.*, by the judgement of said court on the — day of January, 1884, recovered judgement against your petitioner for an undivided one-third part of said ten-league Aguirrie grant.

That the said suit of Nicholas Hanrick *et al.*, as plaintiffs, against your petitioner, as sole defendant thereto, remained pending in the district court of Falls county until on the 19 day of July, 1882, at which time the plaintiff therein, by an amendment therein, made additional parties defendants, viz., William Brady, Philip O'Brien
and his wife, Elizabeth O'Brien; John B. Sargent, Whorton
258 Branch, Nell B. Carpenter, and E. J. Gurley, and which suit
was finally removed by William Brady, as defendant therein, to this court and entered upon the equity docket. Your petitioner further shows unto your honors that in the progress of the before-mentioned litigation against him it was decided by the supreme court of Texas that under the laws of this State aliens could inherit real estate and could also cast de-cent (see Hanrick *vs.* Hanrick, 54 Texas, same case reported in 62 Texas, 598), and the judgement of this court to the same effect was affirmed by the Supreme Court of the U. S. (See 119 U. S. Reports, 156.)

That your petitioner defended said suits brought against him by said aliens and their assigns, as before stated, in good faith, beleiving that said alienage was a bar to said suits, and he was so adviced by counsel, and, said issue being determined adverse to your petitioner, he, in like good faith, was and is willing to partition and divide with said aliens and their assigns all lands belonging to said estate of which he had control or in which he claimed any interest when this suit for partition was brought, which was on the 19th day of July, A. D. 1882, at which time all persons jointly interested with petitioner were made parties to this suit, either as plaintiffs or defendants; previous to that time, your petitioner having been sole defendant in said suits.

And your petitioner further shows that at the date last above mentioned he did not have or claim control, interest, possessions, or right of possession in any of the lands described in the bill- of complaints filed herein by plaintiffs, except as stated in his answer to said bill and particularly shows by Exhibit A & M, attached thereto.

And your petitioner further shows that in maintaining
259 and defending the right and title of said estate to said lands
he has necessarily expended a large amount for court costs and other expenses of suits, viz., the sum of $4,881.89, an itemized statement of which is shown by Exhibit B, attached to said answer.

That he has also paid tax on said lands the sum of $13,904.18, as shown in Exhibit B, attached to said answer.

And petitioner had hoped that the plaintiffs herein, viz., Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Eliza Whelan, and the defendant William Brady, Philip O'Brien, and the estate of Elizabeth M. O'Brien, would be willing to divide and partition the lands held by them jointly with your petitioner and E. J. Gurley, and would also be willing to pay to your petitioner their just *pro rata* share of the amount expended by your petitioner as above stated for costs of said suits and for taxes.

But your petitioner charges the contrary to be true.

Your petitioner charges that during the progress of this suit the plaintiffs, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, Eliza Whelan, William Brady, and O'Brien and wife, combining and confederating with each other and with William Kelihon, W. D. Ake, Mackenson, and Price, J. M. & T. J. Denson, J. A. Denson, John Janack, John Scott, John Nauser, J. E. & Emma Guinn, G. W. Irvin, T. F. Pace, M. M. Gardener, Mansell Gardener, Mace Hall, Cyrus Eubank, John Kolinic, A. J. James, William D. Harreson, P. R. Taylor, John W. Rudicell, Joseph Cleveland, J. M. Robinson, J. P. Smith, J. D. Ashmore, T. B. Cochran, S. J.
260 Ake, Lewis Eubank, W. L. Ashmore, J. M. Smith, A. R. & J. K.
Bowen, G. S. Taylor, J. W. Wayman, Isaac Crayton, C. E. Eubank, Andrew Janack, W. Mildenhausen, J. M. Denson, T. J. Denson, and N. S. Walton, and fraudulently intending to embarrass, hinder, and defeat your petitioner in the prosecution of the suits heretofore referred to brought by him against said above-named persons to recover parcels of the said Aguirrie ten-leagues tract in Williamson county, did first, having placed all of their title in the said William Brady in the name of the said Wm. Brady and for the benefit of himself and his said confederates, convey*ed* by deeds to each of said parties that portion of the said Aguirrie grant respectively claimed by them and for which they severally defended the aforesaid suits brought by this petitioner, and did in said deeds severally covenant and warrant and defend against all persons claiming under Edward Hanrick, deceased, meaning thereby your petitioner and E. J. Gurley, and did also further agree with said parties to have the said lands so partitioned among those entitled to shares in said Hanrick estate as to vest the entire title in them, William Kelihon *et al.*, in severalty.

And petitioner further charges that the plaintiffs in this suit, in consum-ation of the purpose to deprive petitioner of his interest in said lands, have by their pleadings in this suit attempted to disparage the said Aguirre title and allege that it is of doubtful validity and seek to exclude said land from partition in this suit.

And petitioner charges that the said Aguirre title is good and valid and free from suspicion and has been so held by the supreme court of this State, wherein petitioner was plaintiff and
one A. M. Jackson was defendant, and petitioner further
261 charges that the said persons above named and to whom
the said Brady made conveyance, as hereinbefore alleged,

had prior to the date of said conveyances no substantial grounds of defence against your petitioner's suit, and your petitioner had good reason to expect and did expect to recover judgement against them, and petitioner admits that as to the remainder of said suits the defendants therein may have good defense against petitioner by reason of adverse possession and limitation, upon which ground defence is made, and as to the parcels of land involved in said suits neither the plaintiffs herein nor defendants Brady and O'Brien and wife have any right or interest not fully barred by the operation of the statutes of limitation.

And petitioner charges that the said plaintiffs herein and the said William Brady and O'Brien and wife have, by the institution of numerous suits against petitioner in many different courts, needlessly vexed, harrassed, and oppressed petitioner.

That until July the 19, 1882, he was sole and only defendant in said suits, and that upon that date each and all of said suits ought only to have adjudged that James Hanrick and Elizabeth O'Brien, under whom they claimed, were equally joint heirs with petitioner.

That although they well knew that E. J. Gurley was in possession of said lands jointly with petitioner, and that a large portion of said lands was held in small parcels by many other persons who claimed title thereto in themselves, yet with full knowledge that said land was so held and occupied at and before the time said suits were brought neither the said Nicholas Hanrick nor said Brady and O'Brien and wife made said persons parties defendants in any of said suits or attempted in any manner to establish their alleged rights as to said parties.

262 That the said Brady has also acted oppressively and wrongfully in combining and confederating with said Kelihon and other defendants in the above-mentioned suits and in supporting and encouraging in defending said suits and in making the aforesaid deeds to them as hereinbefore stated.

And petitioner says that it would be contrary to equity & good conscience to allow the said Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare and husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, and Robert Whelan, Bridget Whelan, Eliza Whelan, William Brady, and O'Brien and wife to withdraw from the jurisdiction of this court any part of said estate and appropriate the same to their own use without the consent of this petitioner or the court, and that such action, if permitted, would injuriously and oppressively affect petitioner.

And your petitioner avers that all persons having or claiming to have any undivided interest in the lands belonging to said estate — to this suit, whether as plaintiffs or defendants, by plea filed July 19th, 1882, except Duncan Cameron, who was made a party A. D. 188–.

That prior to said date the plaintiffs Nicholas Hanrick, Annie Hanrick, Ellen Hanrick were joint plaintiffs with their brothers and sisters in this suit, and in which they jointly set up legal title in all the plaintiffs to an undivided one-third part of the land situated in Falls county, and at the date above they, by an amendment, set

up the fact that the said Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick had severally made to Eliza M. O'Brien the deeds hereinbefore mentioned upon the trust mentioned, and that O'Brien and wife had, in violation of said trust, *had* made conveyances to Nell B. Carpenter, William Brady, and Duncan Cameron, John B. Sargent, and Wharton Branch, as hereinbefore mentioned,
263 and praying a cancellation of said deeds and for partition.

And petitioner alleges that by said amendment filed as aforesaid July 19, 1882, the said suit was in form and substance materially changed and became from that date a new and different suit.

And petitioner avers that as to the pretended equitable interest in said Zarza and La Serda tracts, which is still claimed in this suit by Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick, the same is barred and has become fully vested in your petitioner because—

1st. The said Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick did by their voluntary deeds convey to Eliza M. O'Brien for the purpose of enabling her to sue for said interest, who agreed to recover when recovered less expense; and that afterwards, Nov. 27th, 1878, she, joined by her husband, did convey an undivided one-half interest to William Brady, and the said Brady did as a part of said transaction and in consideration for said deed bind himself to place said deeds on record and to bring suit to recover said interest; and the said Brady did, Feb. 13, 1888, cause a suit at law to be instituted in this court in the joint names of himself and Philip O'Brien and wife, as plaintiff-, against your petitioner, as defendant, for an alleged undivided interest in said Zarza and La Serda tracts.

In which said suit Wharton Branch and John B. Sargent also intervened as parties, claiming, by virtue of the deeds hereinbefore mentioned, an undivided interest in said lands against the said plaintiffs in the said suit, as well as against your petitioner, defendant therein; and petitioner alleges that said court had full jurisdiction of the said parties, of the subject-matter, and power to hear and determine all of the issues in said cause, and thereupon it was determined and after full hearing of the facts was adjudged that said Brady, O'Brien and wife do have and recover of and from
264 your petitioner as defendant and from John B. Sargent and Wharton Branch, intervenors, an undivided one-third part of said lands, which judgment is final and conclusive on all of said parties as to all matters in issue or which could have been put in issue in said cause.

Wherefore petitioner alleges that said Nicholas Hanrick, Annie Hanrick, and Ellen Hanrick cannot be again heard to assert their title against this petitioner, and that the question of title is as between them and your petitioner *res adjudicata;* and because, 2nd—

The said title of said Nicholas Hanrick, Annie and Ellen Hanrick in and to said lands situated in Falls county and hereinbefore referred to and described is barred, and the said title has become vested in your petitioner for this, that your petitioner has had and held the actual adverse possession of said lands for ten

years and more, peace-bly and continuously cultivating, using, and enjoying the same and claiming title thereto; and, further, he says that said Nicholas, Annie, and Ellen Hanrick have and assert no equities as to their claim of title against petitioner, and although it is true that they have as against the said O'Brien and wife and the said William Brady alleged a breach of trust on the part of O'Brien and wife in making said conveyances and the non-payment of any valuable consideration by said William Brady for said conveyances to him and in response to which charge the said O'Brien and wife and the said Brady did appear, by their attorney, and file plea on the — day of ——, in which said plea they each d*e*sclaimed any title or right in themselves by virtue of the aforesaid deeds made by the said Nicholas Hanrick, Annie and Ellen Hanrick to said Eliza M. O'Brien, and as to said allegations and disclaimer your petitioner shows to your honor that the said allegations are not
sufficient in law or equity to avoid the said deeds, nor are
265 the said allegations true in fact, nor can the disclaimer of the
said O'Brien and wife and the said Brady dispense with proof of the facts alleged by said Nicholas, Annie, and Ellen Hanrick to avoid said deeds, nor can the said disclaimer take the place of a deed reconveying said title to them or in any way have that effect.

And petitioner charges that the said disclaimer was collusive and fraudulent as to petitioner, and the same was intended and designed to prevent your petitioner from interposing the plea of the statute of limitation as to the said claim of Nicholas, Annie, and Ellen Hanrick; and petitioner alleges that prior to the institution of any suit against him by his cotenants he did in good faith establish his home upon the said Zarza grant and did cause to be erected extensive and valuable improvements, a list of which *are* stated in Exhibit X, attached to his answer to the bill of complaint*ants* filed herein against him, which he prays may be referred to for d*i*scription, and did also cause to be made many other improvements upon different portions of the said Zarza and La Serda grants, which are occupied by his agents and tenants, a list of which improvements *are* also set out in Exhibit Y, also attached to said answer, a more particular specifi*cta*ion of which is unnecessary in view of the rel*e*if prayed concerning the same.

And petitioner avers that, to wit, on the 19 day of July, A. D. 1882, he and the defendants herein, viz., E. J. Gurley, William Brady, Eliza M. O'Brien, since deceased and who is now represented by W. A. Patrick, administrator of her estate; Philip O'Brien, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare and her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Eliza Whelan, were the joint owners and were entitled to the possession of all that part of the R. D. Aguirrie ten-league grant situated in Williamson county and more fully described in Exhibit X, here-
266 with filed and made part of this cross-bili, and being the
same land sold and conveyed, as hereinbefore alleged, during the pending of this suit by the said William Brady to the said sev-

eral parties therein mentioned, the said land being of the aggregate value of four hundred thousand dollars.

That the said land was held by the above-named owners on the day aforesaid and in undivided shares as follows, viz.: E. J. Gurley, one-third; William Brady and Philip O'Brien and wife, as assignees of Elizabeth O'Brien, two-ninths; Nicholas, Annie, and Ellen Hanrick, Elizabeth Clare and her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, and Eliza Whelan, heirs of James Hanrick, deceased, two-ninths, and your petitioner two-ninths.

That on the day aforesaid your petitioner, with E. J. Gurley, Philip O'Brien and wife, Elizabeth Clare and her hus*d*and, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whela-, and Eliza Whelan, were joint owners and entitled to the possession of the following-described lands, situated in Falls county, being part of the Pedro Zarza five-league grant and part of the Antonio de la Serda grant and more particularly described in Exhibits A & M, filed in this cause as part of the answer of E. G. Hanrick to plaintiffs' bill of complaint, and it is prayed may be here considered as part of this cross-bill, said lands being of the value of one hundred and fifty thousand dollars.

That the said lands were held by said owners on the day aforesaid together and in undivided share- as follows, viz: William Brady, Philip O'Brien and wife, as the assigns of Elizabeth O'Brien, two-ninths; Elizabeth Clare and her husband, Thomas 267 Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and Eliza Whelan, as heirs to one-half of the estate of James Hanrick, deceased, one-ninth.

E. J. Gurley, one-third; E. G. Hanrick, one-third.

And petitioner prays that a decree of this court may be made and entered establishing said undivided shares in said land as above alleged, and that each of said shares be charged with its just *pro rata* part of the aforesaid sums expended by petitioner in payment of costs of court and for taxes on said lands as hereinbefore alleged, and that commissioners may be appointed to partition and divide said shares in said lands equally according to value, and that such commissioners be instructed that in making partitions they shall set off such portions as are improved and occupied by petitioner, his agents and tenants, as a part of the share of petitioner, if it can be done without prejudice to his cotenants; otherwise said improvements to be valued and the value of same made a lien on the share of the cotenant receiving the same.

That said commissioners be also instructed to value the several parcels of land sold and conveyed as aforesaid by William Brady pending this suit to the said William Kelihon and others, as hereinbefore shown, and the said parcels according to value be set off as a part of the share of the said Brady and O'Brien and wife and of the said Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare and her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, and

Eliza Whelan, if the same can be done without prejudice to partitioner.

268 And petitioner also prays for such other and further relief as he may be entitled to either in law or in equity; and, as in duty bound, will ever pray.

GOODRICH & CLARKSON,
Att'ys for E. G. Hanrick.

Answer to this cross-bill under oath by the defendants herein is expressly waived.

GOODRICH & CLARKSON, *Att'ys, &c.*

Exhibit X.

Description of Tracts of Land Referred to in Sec. —, Page —, Supra.

Wm. Brady to W. K. Macenson and R. H. Price; tract containing 394 acres, being survey No. 49, in said county, made by the county surveyor of the same, on the San Gabriel river, about 11½ miles N. 77 E. of the town of Georgetown; deed dated Feb. 25, 1884; recorded, vol. 34, page 39.

Wm. Brady to William Kelihorn; deed dated June 10, 1884; recorded, vol. 34, page- 393 & 402; a tract of land containing 320 acres, survey made by virtue of certificate issued to W. B. Vestal, being survey No. 46 on Williamson creek; also—

A tract containing 640 acres, being a survey made for I. & G. N. Railroad Co. by virtue of certificate No. 215, and being survey No. 149 on waters of Opossum creek, about 12 miles N. 75° E. from the town of Georgetown; also—

A tract containing 640 acres, being survey No. 45, made by said surveyor by virtue of certificate made to McKinney & Williams, on Williamson creek, 10½ miles N. 45 E. from Georgetown; also a tract containing 447 acres, being survey No. 50, made by said surveyor by virtue of certificate issued to Wm. M. Cook, on the
269 San Gabriel, 10 miles N. 70 degrees E. from Georgetown; also—

A tract of $415\frac{4}{15}$ acres of land, being survey made for the I. & G. N. R. R. Co. by virtue of certificate No. 214, being survey No. 153, made by said surveyor on Opossum creek, about 8½ miles N. 63 E. from Georgetown; also—

A tract containing 640 acres of land, being a survey made for the I. & G. N. R. R. Company by virtue of certificate No. 88, being survey No. 155 on the waters of Opossum creek, about 11 miles N. 57 E. from the town of Georgetown; also—

A tract containing 224.6 acres, being a survey made for the I. & G. N. R'road Company by virtue of certificate No. 214, being survey No. 152 on the waters of the San Gabriel, about 8½ miles N. 69 E. from the town of Georgetown; also—

A tract containing 640 acres of land, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 87 by said surveyor, being survey No. 151 on waters of Opossum creek, about 9 miles N. 66 E. from the town of Georgetown ; also—

A tract containing 640 acres of land, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 87 by said surveyor, being survey No. 151 on waters of Opossum creek, about 9 miles N. 66 E. from the town of Georgetown ; also—

A tract containing 519 acres of land, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 216, being survey No. 148 on waters of San Gabriel, about 12 miles N. 84 E. from *of* Georgetown ; also—

A tract containing 500 acres of land, being a survey made for the I. & G. N. Railroad Co. by virtue of certificate No. 93, being a survey, No. 156, on waters of Opossum creek, about 12 miles N. 65 E. from the town of Georgetown ; also—

270 A tract containing 640 acres of land, being a survey made for the I. & G. N. R. R. Co. by virtue of certificate No. 219, being survey No. 158 on the waters of Williamson creek, about 13 miles N. 56° E. from Georgetown.

A tract containing 472 acres of land, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 41, being survey No. 162 on waters of Opossum creek, about 8 miles N. 63 E. from the town of Georgetown ; also—

A tract containing 159 and $\frac{8}{10}$ acres, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 41, being survey No. 165 on waters of San Gabriel creek, about 8 miles N. 69 E. *of* the town *fo* Georgetown ; also—

A tract containing 30 acres, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 47, being survey No. 164 on waters of Opossum creek, about 10 miles N. 55 E. from the town of Georgetown ; also—

A tract containing 640 acres, being a survey made for the I. & G. N. Railroad Company by virtue of certificate No. 42, being survey No. 161 on waters of Opossum creek, about ten miles N. 45 E. from Georgetown ; also—

A tract containing 104 acres, being a survey made for Lewis M. Russell by virtue of unlocated balance certificate 3714$\frac{38}{15}$; also—

A tract containing 3$\frac{2}{3}$ acres. Begin-ing on the east line of the J. C. Bell survey 66 vs. N. 19 W. from the S. E. corner of said survey, thence S. 470 vs. to stake ; thence S. 81 W. 176 vs. ; thence S. 30 W. 37 vs. to Opossum creek ; thence down said creek to S. E. corner — 29 and $\frac{1}{2}$ acres deeded to M. M. Gardner by Mrs. Ward ; thence N. 45 to said Bell's S. E. corner ; thence N. 19 W. 66 vs. to beg. ; also—

A tract containing 37 acres. Begin-ing at the N. E. corner of said survey 149, thence N. 71 E. 232 vs. to W. line of the Tegg survey ; thence S. 19 E. 902 vs. to S. W. corner of said Tegg survey ; thence S. 71 W. 232 vs. to cor. ; thence N. 19 W. 902 vs. to beg. ; also—

A tract containing 8 acres. Beg. at middle of Opossum
271 creek where the W. line of the J. D. Ashmore pre-emption

survey crosses the same, thence S. 19 E. 375 varas; thence N. 24 E. 244 vs.; thence up said creek to beginning.

All of said tracts next above described, conveyed to the said Kelihon by the said Brady, except the last three, being described in detail in the records of the office of the county surveyor of Williamson county, where the same are numbered as surveys made by him as aforesaid.

William Brady to J. A. Denson; deed dated June 5, 1884; recorded, vol. 34, page 420:

A tract of land containing 80 acres, being a survey made by the county surveyor of said county for J. A. Denson by virtue of U. B. certificate No. 22202, class 2, issued to George Aug. 7, 1877, said survey being No. 109, situated on the waters of Opossum creek, about 13 miles N. 63 E. from Georgetown; also—

A tract containing 88 acres out of the J. A. Denson pre-emption. Beg. at N. E. cor. of said pre-emption, thence S. 19 E. 672 vs.; thence S. 71 W. 1344; thence north 19 W. 672 vs.; thence N. 71 E. 78 vs.; thence S. 19 E. 480 vs.; thence N. 71 E. 846 vs.; thence N. 19 W. 480 vs.; thence N. 71 E. 421 vs. to the beginning; also—

A tract containing 114 acres. Beg-ing the south part of survey No. 157, made by virtue of certificate No. 93, issued to the I. & G. N. Railroad Company. Beg. at N. W. cor. of the J. A. Denson survey, a stone cor., from which a nelm b'rs S. 30½ W. 31.6 vs.; thence S. 19 E. 672 vs.; thence N. 71 E. 250 vs.; thence S. 19 E. 304 vs.; S. 19 W. 850 vs.; thence N. 19 W. 700⅔ vs.; thence N. 71 E. 63 vs.; thence N. 19 W. 267⅔ vs.; thence N. 71 E. 536½ vs. to beginning.

A tract containing 132½ acres. Beg. at S. E. cor. of J. A. Denson survey, stake and mound, thence N. 49 W. 672 vs.; thence
N. 71 E. 422 vs.; thence N. 19 W. 672 vs.; thence N. 49½ E.;
272 thence S. 71 W. 751 vs. to the begin-ing.

William Brady to John Scott; deed dated March 1, 1884; a tract containing 262 acres, being situated on the waters of Williamson creek and known as the Leach survey. Begin-ing at the N. E. cor. of the George Fulcher survey, thence N. 20 E. 222 vs.; thence N. 70 W. 2,602 vs.; thence S. 19 E. 860 vs.; thence N. 71 E. 475 vs.; thence S. 19 E. 950 vs.; thence N. 71 E. to begin-ing.

William Brady to John Nauser; deed dated June 12, 1884; recorded, vol. 34, page 608; a tract containing 77 acres, being the Albert Hogan pre-emption survey, as shown in the records of the office of the county surveyor of said county; also—

A tract containing 22¾ acres out of the Alonzo Hogan pre-emption, being tract conveyed by J. M. McHorse and wife to John Nauser by deed bearing date April 14, 1884, and recorded in vol. 34, page 221.

7. William Brady to J. E. and Emma McGuire; deed dated June 12, 1884; recorded, vol. 34, page 616; a tract containing 367 acres of land, being all that portion of survey No. 70, made October 27, 1884, for Alexander J. Dallas except a tract containing 176 —, hereinafter described as conveyed by the said Brady to C. E. Eubank, and the — containing 120 —, hereinafter described as conveyed by Wil-

liam Brady to Cyrus Eubank, and a tract of 50 acres sold by J. E. McGuire to J. V. Eubank; also—

A tract containing 48.2 acres, being survey No. 166, made by virtue of I. & G. N. R. R. certificates No. 47, as shown by the records in the office of said surveyor.

William Brady to W. D. Ake; deed dated June the 12, 1884; recorded, vol. 34, page 626; a tract of land containing 75 acres. Begin-ing at the point on the northern line of the Rafael de 273 Aguirrie where it crosses the E. line of the Mary Kemp survey, thence S. 19 E. 872 vs.; thence N. 71 E. 706 vs.; thence N. 19 W. to the N. line of the Aguirre; thence with the north line of the Aguirrie to the place of begin-ing.

William Brady to G. W. Irwin; deed date- June the 12th, 1884; recorded, vol. 34, page 629; a tract containing 150 acres, being the G. W. pre-emption survey; also—

A tract containing 160 acres, the same being known — Francis Witt survey. Beginning at the N. W. cor. of the John Scott survey, thence S. 71 W. 967 vs., thence S. 19 E. 934 vs. to stone mound, thence N. 71 E. 967 vs. to stone mound, thence N. 19 W. 934 vs. to begin-ing.

William Brady to Thomas F. Pall; deed dated June 12, 1884; recorded, vol. 34, page 422; a tract of land containing 49¾ acres of the north end of the James H. Robins pre-emption rurvey. Beginning at the N. W. cor. of said survey, thence S. 19 E. 304 vs., thence S. 69½ E. 694 vs., thence N. 19 W. 746 vs., thence S. 71 W. 535 vs. to the begin-ing.

William Brady to M. M. Gardner; deed dated June 10, 1884; recorded, vol. 34, page 425. Exhibit B, page 9. A tract of land containing 100 acres, being a part of survey 153, made for the I. & G. N. R. R. Company. Begin-ing at the S. W. cor. of the J. C. Bell survey, thence S. 19 E. 513.3 vs., thence N. 71 E. 1,100 vs., thence N. 19 W. 513 vs., thence S. 71 W. 370 vs. to the begin-ing.

A tract containing about 25 acres, being a part of the J. D. Ashmore survey. Beg. in the bed of Opossum creek, a rock in creek b'rs S., thence N. 453 vs. — a corner on north line of said survey, thence S. 71 W. 549 vs., thence S. 19 E. 285 vs. to cor. in bed 274 of creek. Same begin-ing in W. line of said pre-emption survey, thence N. 71 E. and with the meanders of said creek to the place of begin-ing.

William Brady to Mansell N. Gardner; deed dated June 12, 1884; recorded, vol. 34, page 423.

A tract containing 130 acres of land, more or less, out of the W. A. Dodd and W. V. Crenshaw pre-emption surveys. Begin-ing at the S. E. cor. of the James A. Page survey, thence S. 71 W. 158 vs. to a stone mound, N. 20 E. 235¾ vs., thence N. 19 W. 231½ vs., thence S. 19 E. on said line 271 vs. to beg.

William Brady to Moses Hall; deed dated June 12, 1884; recorded, vol. 34, page 467; a tract of land containing 160 acres, the same being Moses Hall's pre-emption survey.

William Brady to Cyrus Eubanks; deed dated June 12, 1884; recorded in vol. 34, page 407; a tract of land containing 120 acres, being the tract of land of the — Dallas survey, conveyed by J. S. McGuire to Cyrus Eubanks by deed dated June 3, 1883; recorded in vol. 31, page 506, records of Williamson county.

William Brady to John Kaline; deeds dated June 12, 1884; recorded, vol. 34, page 471; a tract of land containing 160 acres, the same being know as the Texana Dooley survey, about 7½ miles N. 69 E. from Georgetown.

William Brady to A. J. James; deed dated June 12, 1884; recorded, vol. 34, page 480; a tract of land containing 100 acres, south of A. J. James' pre-emption survey, being all of said survey except a tract of land containing 50 acres, conveyed by said James to J. A. West by deed dated on — day ——, and except also tracts of land containing 10 acres, conveyed by said James to D. A. Jordon, and being the ell of said James survey.

275 William Brady to William Moldenhauser; deed dated June 12, 1884; recorded, vol. 34, page 482; a tract of land containing 106⅔ acres, being a part of the A. D. Stockholm survey. Beginning at the S. E. cor. of Stockholm survey on line of Jas. Richardson survey, from which a walnut 8 inches in dia. b'rs S. 30 E. 2.8 vs., thence N. 19 W. 1,628 vs., thence S. 71 W. 370 vs., thence S. 19 E. 1,020 vs. crosses Opossum creek 1,628 vs. to cor., thence N. 71 E. 370 vs. to beginning.

William Brady to John Janack; deed dated June 12, 1884; recorded, vol. 34, page 483; a tract of land containing 190 acres. Beg. at N. E. cor. of the J. D. Clark pre-emption survey, thence S. 71 W. 1,900 vs. to pile of rocks, thence S. 19 E. 534 vs., thence N. 71 E. 1,900 vs., thence N. 19 W. 534 vs. to beginning.

William Brady to William B. Harreson; deed dated June 12, 1884; recorded, vol. 34, page 511; a tract of land containing 95.8 acres and being the W. B. Harreson pre-emption survey.

William Brady to P. R. Taylor; deed dated June 12, 1884; recorded, vol. 34, page 531; a tract of land containing 148 acres, being the P. R. Taylor pre-emption survey.

William Brady to John W. Rudicill; deed dated June 12, 1884; recorded, vol. 34, page 552; a tract of land containing 228 acres, being the John Scott pre-emption survey of 80 acres and a pre-emption survey of 148 acres made for George Fulcher.

William Brady to Joe Cleveland; deed dated June 12, 1884; recorded, vol. 34, page 554; a tract containing 160 acres and being the pre-emption survey made for said Joe Cleveland.

William Brady to J. M. Robinson; deed dated June 12, 1884; recorded, vol. 34, page 556; a tract of land containing 25 acres out of the W. J. Webb survey, being the same tract of land con-
276 veyed by said W. J. Webb to the said J. M. Robinson by deed dated October 13, 1882; recorded, vol. 29, page 537.

William Brady to J. P. Smith; deed dated June 15, 1884; recorded, vol. 37, page 27; a tract of land containing (Exhibit B, page 13) 42½ acres, being all that portion of Oscar Miller pre-emption survey not included in tract of land conveyed by E. G. Hanrick to H. D. Miller by deed recorded in vol. 15, page 233, records of Williamson county.

William Brady to J. D. Ashmore; deed dated June 12, 1884; recorded, vol. 36, page 148; tracts of land containing 137.66 acres, 1st tract containing 68⅔ acres, being all of the J. D. Ashmore pre-emption survey except a tract containing 8 acres conveyed to William Kelihon by M. M. Gardner by deed dated June 20, 1884; recorded, vol. 34, page 447; 2nd tract containing 32 acres of the Alonzo Hogan pre-emption survey, being the tract purchased by J. D. Ashmore from J. W. McHorse by deed dated March 8, 1884; recorded, page 254, vol. 34, records of Williamson county.

William Brady to R. H. Price and T. B. Cochran; deed dated Feb. 25, 1884; recorded, vol. 32, page 491; a tract of land containing 320 acres, being known as the Thomas Tubb survey. Beginning at the S. E. corner of what is known as the John Shark survey, thence north 20 E. 1,900 vs., thence S. 70 E. 950 vs., thence S. 20 W. 1,900 vs., thence N. 70 W. 950 vs., to place of beginning.

William Brady to S. J. Ake; dated June 12, 1884; recorded, vol. 37, page 501; a tract of land containing 149.6 acres, being the J. T. Ake pre-emption survey.

William Brady to William Kelihon; deed dated June 10, 1884; recorded, vol. 34, page 594; a tract of land containing 18 acres between L. M. Russell survey and the H. E. Edrington survey,
277 formed by extending the south line of the Edrington survey
to the east line of the Russell survey and by extending the north line of the Russell survey to the west line of the Edrington survey.

William Brady to J. M. and T. J. Denson; deed dated Feb. 23, 1884; recorded, vol. 34, page 1; a tract of land containing 577 acres. Beginning 80 vs. S. 70 W. from the N. W. cor. of 640-acre survey in the name of J. H. Gomer, thence N. 71 E. with Garmer's line 1,430 vs. to the cor. of Garmer's survey; thence S. 19 E. 1,344 vs. to another corner of same; thence N. 17 E. 450 vs., stake; thence N. 19 W. 1,344 vs., stake & mound; thence S. 71 W. 250 vs., stone for cor.; thence N. 19 W. 480 vs.; thence S. 71 W. 1,378 vs. across Williamson creek, 2,536 vs. to cor. of John Scott's pre-emption, the N. E. line of Francis Witt pre-emption; thence S. 19 E. 167 vs., cor.; thence 3,648 E. 1,734 vs., corner of G. Watney survey; thence N. 71 E. 881½ vs. to cor. on E. line of tract sold by E. G. Hanrick to J. M. and T. J. Denson; thence N. 19 W. 728 vs.; thence S. 71 W. 500 vs.; thence N. 19 W. 620 vs. to the beginning; also—

A tract containing 428 acres, being survey No. 44, made by virtue of certificate issued to Thomas Malone.

William Brady to Mrs. Lewis Eubank *et al.;* deed dated June 12, 1884; recorded, vol. 37, page 415; a tract of land containing 160 acres, *d*eing the Solomon Goff survey; also—

A tract of land containing 50 acres, conveyed to L. M. Eubank by J. S. McGuire, out of the A. J. Dallas location, by deed recorded in vol. 31, page 504.

William Brady to J. M. and T. J. Denson; deed dated March 1, 1884; recorded, vol. 34, page 259; a tract of land containing 354 acres, being a part of the William Leach survey. Beginning at the

S. W. cor. of the T-omas Malone survey, thence S. 7 E. 1,554
278 vs. to S. E. cor. of said Malone survey; thence S. 20 W.
1,279 vs. to the S. W. cor. of a survey for McKinney and Williams; thence S. 47 W. 465 vs. to the N. E. cor. of the J. A. Denson survey; thence S. 71 W. 200 vs. to the S. E. cor. of the J. H. Gardner survey; thence N. 19 W. 1,373 vs. to another corner of same; thence S. 70 W. ’50 vs.; thence N. 19 W. 788 vs.; thence N. 71 E. 271 vs. to the place of beginning; also—

A tract containing 55$\frac{1}{3}$ acres, being a survey made by virtue of certificate No. 6, issued to William Leach; also—

A tract containing 71 acres. Beginning at N. W. cor. of Jarnejan 160 acres pre-emption survey, thence N. 19 W. 357 vs.; thence N. 71 E. 572 vs. thence 19 W. 200 vs.; thence S. 70 E. 890 vs.; thence S. 71 W. 1,279 vs. to the begin-ing.

William Brady to W. M. Ashmore; deed dated June 12, 1884; recorded, vol. 37, page 422; a tract of land containing 68 acres, being all of the Julia Ashmore pre-emption survey of 160 acres, except a tract containing 37 acres, conveyed by Julia Ashmore to J. B. Ashmore, and except also a tract containing 52 acres, conveyed by the said Julia Ashmore to Isaac McHorse; also—

A tract containing 48 acres, out of the W. M. Ake 320-acre pre-emption survey. Begin-ing in the north boundary line where a certain branch crosses the same, thence S. 71 W. to the N. W. corner of said survey; thence 19 E. with west boundary line of the same point where the said branch crosses said west line; thence up the branch to place of beginning. Exhibit B, page 17.

William Brady to J. Mitchell Smith; deed dated June 12, 1884; recorded, —, —; a tract of land containing 238 acres. Begin-ing at N. W. corner of the L. C. Denson 160-acre survey, N. 19 W. 950
vs.; thence N. 71 E. 1,425 vs.; thence S. 19 E. 950 vs.;
279 thence S. 71 W. 1,425 vs. to the begin-ing.

William Brady to A. R. and J. R. Brown; deed dated June 12, 1884; recorded, vol. 37, page 417.

A tract of land containing 160 acres, being the east half of the Isaac Williams 320-acre pre-emption survey.

Wm. Brady to George L. Taylor; deed dated June 12, 1884; recorded, vol. 37, page 419; a tract of land containing 100 acres. Beginning at the N. E. corner of survey made for J. T. Ake, thence S. 71 W. 105$\frac{3}{4}$ vs., thence S. 78$\frac{1}{2}$ E. 92$\frac{3}{4}$ vs., thence S. 10$\frac{1}{2}$ E. to S. line of J. F. Taukersly pre-emption survey, thence N. 71 E. to S. E. cor. of said Taukeresly survey, thence N. 19 W. to the S. line of the J. H. Denson survey, thence N. 19 W. to the place of beg.

William Brady to J. W. Wayman; deed dated June 10, 1884; recorder, vol. 38, page 11.

A tract of land containing 100 acres out of the Alfred Watson pre-emption survey. Beg. at N. W. cor. of said survey, thence N. 71 E. 846 vs., thence 19 E. 1,007 vs., thence S. 17 W. 395 vs., thence N. 19 W. 325 vs., thence S. 71 W. 23$\frac{4}{5}$ vs., thence S. 71 W. 427$\frac{1}{3}$ vs., thence N. 19 W. 333 vs. to the beg.

William Brady to Isaac Crayton; deed dated June 12, 1884; recorded, vol. 36, page 388; a tract of land containing 25 acres out of the Alfred Watson survey, being the tract of land conveyed by Alfred Watson to Taylor Benton and having been served by Jess. B. Wright.

William Brady to C. E. Eubank; deed dated June 12, 1884; recorded, vol. 34, page 615; a tract of land containing 176 acres out of the A. J. Dallas location, being the tract of land conveyed by J. S. McGuire to C. E. Eubank by deed dated July 3, 1883; recorded in vol. 31, page 507, records of Williamson county.

280 William Brady to Andrew Janak; deed dated June 12, 1884; recorded, vol. 34, p. 478; a tract of land containing 160 acres. Beginning at the S. E. corner of the Texana Dooley survey, thence S. 70 E. 1,400 vs., thence N. 19 W. 1,271 vs., thence N. 71 W. 1,088 vs., thence S. 19 E. to the place of beginning. Exhibit C.

A tract of land originally granted to Rafel de Aguirre, lying in Williamson county. Beginning at the point forming the N. W. corner of the land of Pedro Zarza and S. W. corner of that of Miguel Davilla, thence 20′ 11″ along the western boundary of said Zarza, 10,961 vs. passes S. W. corner of said Zarza, at 12,500 vs. stake for corner, thence N. 70 W. 20,000 vs., thence N. 20 E. 12,000 vs., thence S. 70 E. 20,000 vs. to the place of beginning.

STATE OF TEXAS,
Williamson County.

I, J. W. Lane, clerk of the district court of Williamson county, Texas, do hereby certify that the above and foregoing is a true and correct copy of the plaintiffs' 2nd amended original petition & Exhibits A & B & C thereto attached, filed Aug. 3rd in this cause No. 2135, styled Wm. Brady *et al. vs.* E. G. Hanrick *et al.*

Witness my hand and seal of said court, at Georgetown, this the 6th day of August, 1885.

281 The foregoing is endorsed as follows, to wit: No. 52. Eq. The cross-bill of E. G. Hanrick *vs.* Nicholas Hanrick *et al.* Filed June 2, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

282 U. S. Circuit Court, Northern District of Texas, at Waco, Fall Term, 1888. In Equity.

E. J. GURLEY
vs.
NICHOLAS HANRICK *et al.*

To the hon. judges of said court:

E. J. Gurley, who resides in McLennan county, Texas, with leave of the court, files this his cross-bill, and, complaining of Nicholas and Ellen Hanrick, who reside in the State and county of New York; Annie Hanrick, who resides in Kings county, New York; Elizabeth & Thomas Clare & Peter Whelan; Elizabeth & Bridget Whelan, minors; Mary and Robert Whelan, who reside in Wesford county, Ireland; Catherine O'Neil, who resides in Dublin county, Ireland; Philip O. Brien, who resides in Suffolk county, Mass.; William E. Kendall, who resides in Harris county, Texas, and E. G. Hanrick, who resides in Falls county, Texas, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, who resides in Falls county, Texas, respectfully represents—

That there is now pending in your honor's court a suit in which all the above-named persons are parties, your orator being a def't therein, the object of which suit is to partition certain lands belonging to the estate of Edward Hanrick, deceased, which said lands are fully described in the various exhibits in said case.

That your orator has filed his answer in said suit, setting out his title to ownership of an undivided one-third interest in said lands, which is not disputed by any of the parties in said suit or in this. Your orator, therefore, asks for a judgement for his said one-third interest in said lands, and that the same be partitioned to him by metes and bounds.

Your orator further says that the pleadings, exhibits, and evidence in said suit pending in your honor's court as aforesaid
283 shows that the defendants herein have sold and conveyed by
metes — bounds, during the pending of this suit, various portions of said lands to different persons, and he prays that the said lands thus conveyed be set apart to the parties who conveyed the same to the extent of their respective interests, and that your orator *has* set apart to him other lands not sold or conveyed by said defendants in lieu of the lands sold and conveyed by them as above stated. Your orator, for full description of said lands, s*m*howing those conveyed and those unco-veyed, refers to the exhibits filed in said suit and makes the same a part of this complaint.

Your orator further says that he, before the said suit now pending in your honor's court was brought, made valuable improvements upon the Pedro Zarza five-league tract, on the west side of the Brazos, which said five-league tract is sought to be partitioned in said suit; that said improvements consist of about 1,000 acres of land in a good state of cultivation, with tenant-houses, a steam engine, gins, mills, wells, tanks, stock sheds, &c., to the value of about thirty thousand dollars, and that said improvements were made for farming and s-ock-raising purposes and cover about three acres of said Zarza tract, bounded on the east by the Brazos river, on the north by the north line of said Zarza, on the west by the Port Sullivan road, and on the south by the branch and the line of the Ruble tracts and south line of said Zarza.

And this *the* def't asks that s'd land embraced within said boundaries be set apart to him in partition as unimproved land, because he says that there is enough land outside said boundaries embraced in said partition suit to satisfy the just and legal claims of def'ts herein and because all said improvements were made in good faith and at great expense by your orator with the consent of Edward Hanrick, deceased, and of Edward G. Hanrick, his only
284 acting representative up to the time said suit was filed in
your honor's court as aforesaid.

And without any knowledge on your orator's part of any claim of the other def'ts herein, and because he had and held the continuous uninterrupted possession of the said land and improvements for ten years or more before the said suit now pending in your honor's court as aforesaid was instituted, and if it should appear to your honor that said lands cannot in justice be set apart to your orator as unimproved lands, then your orator prays that he have and recover of the defendants the value of said improvements, to wit, the sum of 30,000 dollars or the value of so much of said improvements as may be upon any part of said lands allotted to any of defendants herein. Your orator further says that the improvements claimed and fully described by defendant*s* E. G. Hanrick in his cross-bill in said suit were in fact made by said Hanrick and your orator jointly, and are fully described in said cross-bill and exhibits, and your orator prays that the said improvements, with the lands embracing the same, be set apart to him or that he have or recover of the defendants the value thereof.

Your orator further says that said improvements were made and are used by him for farming and stock-raising purposes, and that it would be greatly to his interest to have the lands adjoining and near to the lands embracing said improvements set apart to him, so that he could use the same advantageously in his business, and that the same can be done without prejudice to the rights of defendants. He therefore prays that his interest be set apart to him all in one body embracing his improvements or as nearly so as can be done in justice to the def'ts in this cross-bill; and may it please your honor to grant unto your orator a writ of subpœna to be directed to the said Nicholas, Ellen, and Annie Hanrick, Elizabeth & Thomas Clare, Peter, Elizabeth, Bridget, Mary, and Robert Whelan, Catherine O'Neil,
Philip O'Brien, William E. Kendall, W. A. Patrick, and E.
285 G. Hanrick, commanding them person*n*ally to appear before
your hon. court at the next term thereof and make full and
perfect answer to this cross-bill.

And perform and abide such orders and decrees as to your honor may seem fit and proper in the premises.

And that the said subpœna shall, in accordance with the orders of your honor already made, be served upon the solicitors of all those who recide beyond the jurisdiction of your honor's court—

As their names appear of record in the said suit of Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.*, now pending in your honor's court as aforesaid; and may it please your honor to grant all such other and further rel*ei*f unto your orator as shall seem agreeable to equity and good conscience in the premises; and in duty bound, &c.

E. J. GURLEY.

Filed Nov. 19, 1888.

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

286 In the Circuit Court of the United States for the Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Come complainants in the above-entitled cause, and in answer to the cross-bill of the defendants Gurley therein filed refer the court to the allegations in all of complainants' pleadings heretofore filed and adopt the same as their answer to said cross-bill and hereby makes the same a part of their answer.

H. F. RING,
Counsel for Complainants.

Endorsed: No. 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Answer to defendant Gurley's cross-bill. Filed Nov. 19, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

287 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Suit pending in the circuit court of the United States for the northern district of Texas, at Waco, Texas.

The answer of the def'ts Wm. Brady, Philip O'Brien, W. A. Patrick to the cross-bill of defendant E. G. Hanrick, filed herein on the — day of ——, 1888.

These def'ts hereby reiterate and make the allegations set forth in their pleadings heretofore filed in this cause a part of this answer, as much so and to the same effect as though said allegations were specially set forth herein, & do also make all the allegations contained in the answer of complainants, Nicholas Hanrick *et al.*, to said cross-bill, which answer is filed herein on the — day ——, 1888, their own allegations, and do expressly adopt the same and make the same a part of this answer; and for further answer to said cross-bill these defendants say, 1st, that at the time said Wm. Brady sold said 22,000 acres of land in Williamson county he was the owner of all the title and interest of which the said Edward Hanrick, deceased, died seized in and to said ten leagues of land in Williamson county, except the interest in the same inherited by E. G. Hanrick, he, the said Wm. Brady, having acquired this interest in the same from the said Eliza M. O'Brien and others claiming under the alien heirs of said Edward Hanrick, deceased; 2nd, that in selling said land he but followed the example set by E. G. Hanrick and E. J. Gurley, who had then and have since sold and conveyed in the same manner to persons residing on said land in Williamson county some 15,000 acres of land out of said Aguirrie grant, and said Wm. Brady expressly denies that he sold any more land in Williamson county than he would have been entitled to on partition of said lands, and he expressly denies that he has injured

288 the said E. G. Hanrick or E. J. Gurley by making said sales in any way whatever; and these def'ts charge and aver that any partition of said lands in Williamson county in present condition of adverse occupancy is wholly impracticable; that said suit for partition is still pending in the district court of Williamson county, & these def'ts plead the pendency of the same in bar of any attempt to consider said Williamson county land proceedings.

J. T. BRADY,

Solicitor for Wm. Brady, Philip O'Brien, and W. A. Patrick.

Endorsed: 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Answer of Wm. Brady *et al.* to def't E. G. Hanrick's cross-bill. Filed Sept. 1, 1888. J. H. Finks, clerk, by Chas. H. Ledmum, deputy.

289 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} Suit Pending in the United States Court for the Northern District of Texas, at Waco, Texas.

The answer of the complain*t*ants, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, Peter Whelan, Robert Whelan, Bridget Whelan, Mary Whelan, and Eliza Whelan, to the cross-bill of the defendant E. G. Hanrick, filed herein on the — day of ——, 188–.

The complain*t*ants as to said cross-bill hereby reiterate and make the allegations set forth in their *in their* original and amended bills of complaint, filed herein on the — day of ——, 1888, a part of this answer, as much so and to the same effect as though said allegations were again made, specially set forth, and pleaded herein; and, for further answer to the said cross-bill, these complain*t*ants say:

1st. In regard to said alleged suit brought by Nicholas, referred to in paragraphs 28, 28½, of said cross-bill, complain*t*ants — the facts in refer*r*ence to the same are as follows, to wit:

Said Nicholas Hanrick, by himself only, filed said suit, the same being an ordinary suit of trespass to try title, against the said Eubanks, the petition of said plaintiff in said cause setting forth the claim of the said Nicholas Hanrick to an*d* undivided interest in a certain tract of land, containing 100 acres, out of the Pedro Zarza grant, which said tract of land was described by specific metes and bounds in said petition, and said tract of land was therein alleged to be in the possession of said Eubanks, who alone was made a party defendant; that on the trial of said cause a demurrer to plaintiff's petition was sustained and his cause of action dismissed.

290 That by the judgement of the court in said cause said Nicholas Hanrick was only estopped thereafter from ascertaining title to an interest in said 100-acre tract of land as against the said Eubanks, and as to him alone, nor was any judgement therein rendered in favor of the said E. G. Hanrick, nor is his name mentioned

in said judgement, & these defendants refer to said judgment and pleadings in said cause in proof of these allegations.

2nd. And in regard to said alleged conveyances in trust executed by the said Annie, Ellen, and Nicholas Hanrick, referred to in paragraphs, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and the effect of said judgement in said cause No. 14, referred to in paragraphs 28 and 28½, 29, 30, 31, 32, 33, 34, 35, 45, 46, 48, and 49 of said cross-bill, said Annie, Ellen, and Nicholas Hanrick say further in reference to the same that at the time of the institution of said suit No. 14 this cause was pending in the district court of Falls county, Texas, said Annie, Ellen, and Nicholas Hanrick having repudiated said conveyances in trust and having brought suit themselves on their equitable title, as was their right to do under the laws of the State of Texas, nor were they parties to said cau*d*e No. 14, nor did the said Wm. Brady nor the said Eliza M. O'Brien claim or assert or attempt to claim or assert any title to or interest in said land by virtue of said conveyance on the trial of said cause No. 14 in this court, nor were they, the said Annie, Ellen, and Nicholas Henrick, compelled to make the said Wm. Brady, Elizabeth O'Brien, John B. Sargent, and Whorton Branch parties to this suit under the laws of the State of Texas in order to recover *to recover* judgement against the said E. G. Hanrick on their said equitable title, and they, the said Annie, Ellen, and Nicholas Henrick, in reference to the plea of limitation, say further that while said defendants have ever claimed to be in actual constructive possession of said lands up to the time 291 of issuance of said writ of possession, and did, up to that time, in a number of forcible entry and detainer suits, succeed in recovering judgements for the possession of portions of said land against persons who had been put in possession of the same by complainants and the said Wm. Brady on the plea of actual and constructive possession, and did succeed thereby, up to the time last referred to, in depriving complainants and defendants Brady and O'Brien of the use and enjoyment of said lands or any portion of the same; they, the said E. G. Hanrick and Gurley, were not during said period in actual possession of more than a small portion of said lands, to wit, that portion only included within enclosures actually occupied by them and their tenants, said land being, with such comparatively trifling exceptions, wholly unoccupied and unenclosed. Neither did they, the said E. G. Hanrick or Gurley, hold any portion of the same by constructive possession under any deeds, conveyance, or grant, either recorded or unrecorded, purporting to convey the land to them or either of them or by any other form of constructive possession, the said E. G. Hanrick's constructive possession being but to an undivided one-third interest, the same being the interest inherited by him from Edward Hanrick, deceased.

3rd. In regard to the allegations in paragraphs 35, 36, 37, and 38 complainants further say that they never authorized the said E. G. Hanrick and E. J. Gurley or either of them to pay said taxes or to incur any of said expenses, and at the time said taxes were paid and said expenses incurred both the said E. G. Hanrick and the

said E. J. Gurley expressly denied that either the complainant herein or the said Wm. Brady and Eliza M. O'Brien had any right, claim, or interest in and to said lands, and refused to recog-
292 nize them in any way as tenants in common with themselves in and to the same, and refuse- to permit them to enter upon and enjoy the peaceable possession of any portion of the lands pertaining to the estate of Edward Hanrick, deceased; and complainants again say that more than two years and more than four years and more than five years and more than ten years have elapsed since said claims for taxes paid and expenses incurred accrued and that the same are now barred by the statute of limitation of two, four, five, and ten years, which said statute is again pleaded in bar of said claims.

4th. And in regard to allegations in paragraphs 38, 39, 40, 43, and 44 complainants further say that they conveyed all their right, title, claim, and interest in said lands in Williamson county to William Brady for a small consideration of cash in hand paid to them, and that said Wm. Brady did, by deeds warranting against the claims of E. G. Hanrick and E. J. Gurley, convey about 22,000 acres in all of said lands to divers persons for the sum of $1 per acre, but that by so doing the said Wm. Brady did not and could not prejudice any right or claim of the said E. G. Hanrick and E. J. Gurley, and at th*at* time said conveyances were made all of said lands were in the adverse possession of parties holding the same adversely to persons claiming under Edward Hanrick, deceased, the title of the estate of Edward Hanrick having been found to be and declared to be utterly void by the courts of the country, including the supreme court of Texas, on repeated occasions.

H. F. RING,
Solicitor for Complainant Nicholas Hanrick.

293 The foregoing is endorsed as follows, to wit: 52. Equity. Nicholas Hanrick *et al.* *vs.* E. G. Hanrick *et al.* Answer of complainants to def't E. G. Hanrick's cross-bill. Filed September 1, 1883. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

294 In the Circuit Court of the United States for the Northern District of Texas, at Waco. In Equity.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Come the defendants Wm. Brady, Philip O'Brien, and W. H. Patrick, adm'r, and adopt and make the same their own all the allegations in the amendment to complainants' bill herein filed on the 6th day of Feb., 1888, as the defense of these defendants to the allegations contained in the answer on cross-bill of E. J. Gurley and E. G. Hanrick filed in this suit on the 2 day of January, 1888, in answer to plaintiffs' bill of complaint, and pray for all general and special relief which they or either of them may show themselves entitled against all parties to this suit on the trial hereof.

J. T. BRADY,
Of Counsel for said Defendants.

The *following* is endorsed as follows, to wit: No. 52. Equity. Hanrick *et al. vs.* Hanrick *et al.* Filed March 5, 1888. J. H. Finks, clerk, by Chas H. Lednum, deputy.

295 In Circuit Court U. S. for the Northern District of Texas, at Waco. Equity.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Come the defendants Wm. Brady, Philip O'Brien, and W. A. Patrick, administrator in the above entitled and numbered cause, and in answer to the cross-bill of the defendant E. J. Gurley therein filed refer the court to the allegations contained in all of the pleadings filed by the said Wm. Brady, Philip O'Brien, & W. A. Patrick, administrator heretofore in this suit, and adopt the same as their answer to said cross-bill and hereby make all of the said pleadings a part of this their answer to said cross-bill.

J. T. BRADY,
Counsel for Wm. Brady, Philip O'Brien,
and W. A. Patrick, Administrator.

The foregoing is endorsed as follows, to wit: No. 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Equity. Filed Nov. 19, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

296 In the Circuit Court of the United States for the Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs. No. 52. In Equity.
E. G. HANRICK *et al.*

The replication of all the complainants in said case, to wit, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Thomas Clare and Elizabeth Clare, Peter Whelan, Mary Whelan, Robert Whelan, Eliza Whelan, and Bridget Whelan and Catherine O'Neil.

These repliants, saving and reserving to themselves all & all manner of advantage of exceptions which may be had and taken to the manifold errors and uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto say that they doth and will ever maintain and prove these said bills to be true, certain, and sufficient in the law to be answered unto by the said defendants, and the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, and that all matters and things stated in their original bill and amendments to the same these repliants are ready to aver, maintain, and prove as this honorable court shall direct and humbly prays as in and by their said bill they have already prayed.

H. F. RING,
Solicitor — Complainants.

The foregoing is endorsed as follows, to wit: No. 52. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Replication of complainants. Filed April 2, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

297 NICHOLAS HANRICK *et al.* *vs.* E. G. HANRICK *et al.* } Suit in Equity Pending in the Circuit Court of the U. S. for the Northern District of Texas, at Waco.

The replication of Wm. Brady, Philip O'Brien, & W. A. Patrick, administrator, to the answers or cross-bills heretofore filed in this suit by the defendants E. G. Hanrick & E. J. Gurley respectfully states as follows:

That these repliants, saving and *recovering* unto themselves now and at all times hereafter all & all manner of benefit and advantage — which may be had & taken to the manifold insufficiency of the said answer- or cross-bills & amendment thereto, for replication thereunto say that they will *ever*, maintain, and prove the answers of these repliants heretofore filed in this suit to be true, and that said answer- or cross-bill- of the said defendants, Hanrick & Gurley, are untrue, uncertain, and insufficient to be replied to by these repliants; that these repliants also adopt & repeat as their own the replication of complain*t*ants, their cotenants, Nicholas Hanrick *et al.*, filed in this suit on this the 2nd of April, 1888; all of which matters and things *this* repliants are and will — ready to aver and maintain and prove as the honorable court shall direct, and humbly paay as in and by their said answers they have already prayed.

J. T. BRADY,
Solicitor for Defendant- Wm. Brady,
Philip O'Brien, and W. H. Patrick.

The foregoing is endorsed as follows, to wit: No. 52. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Replication of Wm. Brady. Filed April 2, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

298 In the Circuit Court of the United States for the Northern District of Texas, at Waco. In Equity.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*

Come the complainants in the above-entitled cause, with leave of the court first had and obtained, and amend their original bill herein filed on the — day of ——, 1887, and in addition to the allegations therein contained and especially in reply to the averments in the answer of defendants Hanrick and Gurley respectfully represent unto your honor as follows, to wit:

L. That if said alleged contract was ever entered into between the said E. J. Gurley, Hancock and West, and Hale and the said Edward Hanrick, deceased, the same was an executory contract and should have been established against the estate of the said Edward Hanrick, deceased, during the pendency of administration of the same, and that as to said claim as against said estate and as to its being binding on these complainants or on said assignees under and from said Eliza O'Brien, of Ireland, *is in* a stale demand and is barred by the laches of the said defendant, more than twenty years and more than ten years having elapsed since the date of said alleged contract and since the performance of said alleged services under and by virtue of the same, which laches are hereby pleaded in bar of any claim to an interest in said estate and of an interest in and to said lands by virtue of said alleged contract.

2. And complainants aver that the said E. G. Hanrick, as well as the said E. J. Gurley, were both well aware of the existence of other next of kin of the said Edward Hanrick, deceased, and
299 might have become aware of the fact of their existence by
the exercise of reasonable diligence on their part and in reference to the pretence put forth to the effect in said answers as to its being unjust and inequitable for complainants to be permitted to refuse to acknowledge the validity of said alleged contract or to refuse to confirm the alleged deed wherein said defendant Hanrick attempted to bind said estate by conveyance to the said Gurley of an undivided one-third interest in the same or to refuse to compensate either and both of said def'ts for said alleged valuable services rendered and costs and expenses incurred by them.

Complainants say that whatever standing at the bar of conscience or in court of equity the said def'ts or either of them might otherwise have in relation thereto by reason of said alleged valuable services rendered as aforesaid they have forfeited all right to have an equitable claim on such grounds for the following reasons, to wit, first, because of the fact that not only did the def't Hanrick fail and neglect to inform the probate court in which administration in said estate was pending as aforesaid of the fact of the existence of other heirs of the said Edward Hanrick, deceased, but def't Gurley also neglected so to do or to bring such other heirs before said probate court or to take any steps whatever for the protection of their interest in said estate or even to inform them of the pendency of administration proceedings thereon, notwithstanding the pretence now put forth that the said Gurley was then and hath ever been at all times the impartial att'y of all the parties interested in said estate and not the devoted att'y of one only of the heirs of the same.

That when complainants first instituted this suit, on the — day of January, 1879, def't Hanrick was advised and encouraged by
300 def't Gurley to resist the claims of said alien kin of Edward

Hanrick, deceased, to an interest in the estate and to deny *in toto* their right to participate in the enjoyment of any portion of the same, the said E. J. Gurley in said suit becoming and assuming the position of an att'y for E. G. Hanrick, as was also done by him in said cause No. 14 on the law docket of this court, he putting and permitting his name to be put in both cases to the answers therein filed by def't Hanrick as one of the att'ys of record to the same; and he, the said Gurley, hath ever since the death of Edward Hanrick, deceased, in all matters pertaining to said estate acted solely for def't Hanrick and in his interest only as an att'y in matters affecting said lands and pertaining to said estate, to the exclusion of all other heirs and in antagonism to their interests in the same, he having at all times and under all circumstances used his utmost end-*o*vor to prevent their obtaining possession of or the enjoyment of any interest in the same; and complainants expressly charge that said def'ts, Hanrick & Gurley, conspired with each other and combined and colluded together for the express purpose of defrauding complainants and said other alien heirs out of the rights and interest in said lands inherited by them as aforesaid and of finally obtaining a title to the same by limitation.

Second. Because of the fierce, stubborn, and obstinate manner in which both of said def'ts have resisted by uselessly prolonged litigation the attempts of *of* complainants and said assignees of Eliza O'Brien, of Ireland, to obtain possession of their interest in said lands and to succeed to the use and enjoyment of their rights in the same, whereby complainants have been put to great and needless expense and have been caused to pay and sacrifice a
301 much greater portion of their interests in said estate and
lands than the said Hanrick has yielded up out of — own portion of the same for said alleged common good of all interested therein, they having meanwhile been deprived of possession thereof and of the enjoyment of any fruits or revenue therefrom; that ever since the death of Edward Hanrick, deceased, until the — day of ——, 1886, when the judgement rendered in the said cause No. 14 was affirmed by the Supreme Court of the United States, said def'ts have at all times publicly denied the right of complainants and said assignees of Eliza O'Brien to participate in the possession and enjoyment of any interest in said estate; that at the time of the institution of this suit def'ts Hanrick and Gurley were living on said tracts of land in Falls county described in said Exhibit A, attached to def'ts' answer, and had tenants living on said tracts of land at different points on the same, and said def'ts claimed to be in actual, adverse, and hostile possession of all of said tracts of land by reason thereof to the limits and boundaries of said grants, and so represented the fact to be to the world at large, and by means of said exclusive possession and said claim, assertion, and representation of being in constructive possession of all the vacant land in said grant as aforesaid said def'ts did prevent, until the issuance of said writ of possession, these complainants and said assignees under said Eliza O'Brien from obtaining possession of any portions of said lands and from putting and holding any one in possession of the same

or any part thereof or of obtaining any use or enjoyment of the same or any revenue therefrom or from any portion thereof; and said def'ts during said period did, on many occasions and on
302 every occasion *which* complainants and said assignees of
and under *Eli* Eliza O'Brien or any of them attempted to put parties under them in possession of vacant and unused portions of *of* said lands, *did* eject and dispossess such parties from same by obtaining judgements of forcible entry and detainer against them; and said def'ts did at all times and on many and divers*e* occasions prior to the issuance of said writ of possession publicly assert that they would expel*l* and dispossess — said lands any person who should attempt to take possession of any vacant portion of the same under complainants or under any of said alien heirs; whereby complainants were prevented from putting any tenants in possession of said lands or any portions of the same and from deriving any revenue from the same; that on the — day of ——, 1880, the supreme court of Texas rendered their opinion in this cause, then on appeal before said court, wherein the right of the alien heirs of Edward Hanrick, deceased, to inherit an interest in said estate was established, but nevertheless said def'ts continued as before to resist and deny the said rights of said alien heirs, all of which facts are also pleaded by said complainants as reasons why said def'ts should not be relieved from accounting to complainants and said assignees of Eliza O'Brien for said rents and profits, and also as reasons why compensation for said improvements alleged to have been made in good faith should be denied them.

3. And, further, in regard to said claims for improvements in good faith, as well also as to claims for compensation on account of alleged valuable services rendered and alleged costs, expenses, and taxes alleged to have been paid by said def'ts, complainants plead in bar of same all the facts hereinbefore recited, the statute
303 of limitations of two and five and ten years, the laches of
said def'ts shown, and the facts also that said def'ts, at the time said alleged improvements were made and said alleged services were performed and said alleged expenses incurred and costs and taxes paid, *said def'ts* were in the adverse and hostile possession of said lands, and were also conspiring and colluding together for the purpose of defrauding complainants and said assignees of Eliza O'Brien as hereinafter shown and charged.

4. And, in regard to said alleged places shown in Exhibit Y of def't Hanrick's answer, complainants say that all of said improvements were made without any expense to either of said def'ts by tenants placed upon said land by def'ts, who were permitted to use the same for a term in consideration of improving the same.

5. And these complainants admit that def't Gurley is a tenant in common with them under and by virtue of said deed from the said E. G. Hanrick to the extent of such portion of the interest in said estate as the said Hanrick conveyed him out of and from his, def't Hanrick's, interest inherited by him in the same, but to no further extent. Complainants do not admit that the adverse and exclusive possession of said def'ts or either of them hereinafter alleged was for

a sufficient length of time to vest in either of them title by limitation, but complainants expressly deny the same.

H. T. RING,
Solicitor for Complainants.

NOTE.—Both of said defendants named in this amendment to said bill are excused from answering the same or any part thereof under oath, such answer under oath being *be* waived by complainants.

H. T. RING,
Solicitor for Complainants.

304 Endorsed on back as follows: No. 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Complainants' amendment to bill. Filed Feb. 6th, 1888. J. H. Fink, clerk, by Chas. H. Lednum, dep'y.

305 In the Circuit Court of the United States, 5th Circuit, N. D. Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} No. 52. In Equity.

The answer of E. G. Hanrick, one of the defendants in above cause, to the amendment of the complainants herein, Nicholas Hanrick *et al.*, filed Feb. 6th, 1888, and styled "complainants' amendment to bill."

The def't, protesting that he does not waive or modify any part of his answer to the complainants' original bill, and further protesting that the said styled "amendment to bill" does not allege any new facts or state of facts, but is in form and substance a special replication to parts of def't- aforesaid answer and should not be allowed or have effect, says—

1st. That he admits that said contract referred to in said amendment was executory, but avers that the same was in part executed by both parties thereto before the death of said Edmund Hanrick in manner and form as stated by this defendant in his original answer; that this def't and the pl't'ffs herein and the assigns of Elizabeth O'Brien were alike bound be the said contract, and this def't answers that said contract provided for continuous services until the titles and rights of the said Edmund Hanrick should *should* be settled; that the title of the said deceased as to the Antonacio de la Serda tract was formerly settled on the — day of June, 1877; that the title of said deceased as to the Pedro Zarza tract was finally settled on the 19th day of Feb., 1873, and that the suits instituted by this def't to recover the R. de Aguirrie tract in Williamson county from adverse holders are still pending and undetermined, and that the said E. J. Gurley is now in joint posses-ion with this def't as to all the lands belonging to said 306 estate not actually in the adverse occupancy of others, and has been so in posses-ion for many years prior to the institution of this — by virtue of said contract, as fully stated in this def't'- original answer, which statements def't herein reiterates; wherefore def't here again avers that the said right and title of the said Gurley is fully and absolutely vested and the plea of stale demand does not apply.

2. And as — the statements contained in the 2nd paragraph of said amendment this def't says that in fact no proceeding- in said probate court were ever had in the matter of said estate except to apply for letters of administration and to file an inventory, and that no attempt was ever made in said court to take any action requiring the presence of any persons entitled to distributive shares of said estate.

3. And the def't avers that the said pl't'ffs herein and the said assigns of Elizabeth O'Brien, without any previous demand for possession or offer on their part to contribute to or share in the expense incurred by this def't in the care, management, and litigation necessary for the preservation of said estate, did institute numerous suits in the dist. courts of Falls and Williamson counties; also suits in this court and in the U. S. circuit court at Austin; in each and all of said suits the said p'f'*ls* and the said assigns of Elizabeth O'Brien sought to recover their alleged shares in said estate undiminished and free of the burden of expense incurred in the preservation of same.

4. And this def't denies that he has conspired with his codef't, Gurley, or with any one else for the purpose of defrauding 307 the complainants or any one else out of their rights and interest in said estate, and he denies that he ever entertained such a purpose.

5. But, on the contrary, he avers the fact to be as stated in his original answer, as he did in good faith believe himself to be the sole and only heir to said estate, being so advised by counsel learned in the law, and, so believing, did in good faith and without any fraud or intent to defraud urge his defense in the lawfully constituted courts, and the said courts having decided that said alien heirs were capable of inheriting under our law def't has in good faith maintained the liability of the pl't'ff and assigns of Elizabeth O'Brien to contribute their share of the aforesaid expenses incurred by def't as before alleged, and that pl't'ffs and the assigns of Elizabeth O'Brien were not *i*ntitled to the use and enjoyment of their shares without first contributing or offering to contribute their just shares of said expenses; and def't avers that the pl't'ffs were at the time of bringing this suit well aware that at the death of Edmund Hanrick all of the land- claimed by him in Texas were in litigation and adversely held by others; that said lands produced no revenue to him; that this def't, aided by his codef't, Gurley, and other lawyers employed by him, had for many years devoted their time, money, and energy to the care of said estate, and have brought most of said litigation to a successful issue, and was proceeding with due diligence in the prosecution of the pending suits for the recovery of the R. de Aguirrie grant, and that but for the care, attention, services, and money devoted and expended by this

308 def't, as before shown, the entire estate would have been lost to all of the heirs of the said deceased.

And def't avers that, notwithstanding the pl't'ffs and Elizabeth O'Brien and her assigns were well aware of the condition of said estate and of the efforts def't was making to preserve the same and of the necessity therefor, they quietly stood by, neither actively aiding def't or objecting to the measures adopted by him for the preservation of said estate; wherefore this def't says they ought not now to be heard to claim the benefits of same except upon condition of contributing their just share of the aforesaid expenses.

And def't avers that the said pl't'ff-, being careless and neglectful of their own interest and not regarding the right of this def't or of his codef't, Gurley, did, without any previous attempt at any amicable settlement with this def't or with his codef't, Gurley, conspire and confederate with each other and with the said Philip O'Brien, and with intent to harrass and injure this def't and to deprive him of his inter-st in said estate did give and convey and contract to give and convey to third persons one-half of all of their interest in said estate for no other or further consideration or purpose than the engagement of such third persons that they would precipitate the before-mentioned litigation upon this def't; wherefore this def't denies that he has in making his just and lawful defense to the said numerous and vexatious suits put the said complainants to great and needless expense or cause them to pay or sacrifice any part of their interest whatsoever.

And further this def't again alleges (as stated in his original answer) that he did not in fact keep the pl't'ffs out of possession, but he avers the fact to be that the pl't'ffs, *and* well as the assigns of Elizabeth O'Brien, having elected to bring the aforesaid several suits to recover possession, did, during the progress of the same and before judgment therein, enter upon the said land and sell and convey by deeds large portion thereof to many different persons who now occupy the same adversely to the def't, and did also, by tampering and colluding with the tenants of this def't, seize upon parts of the land improved by this def't and with high hand -rest them from def't and still hold the same; and def't denies that he has by writ at law or otherwise ousted or ejected from any portion of said land the said complainants or the assigns of Elizabeth O'Brien or any person claiming under them; all of which this def't is ready to verify by proof. 309

GOODRICH & CLARKSON,
Of Counsel for E. G. Hanrick.

I, E. G. Hanrick, being duly sworn, depose and say that I have read the within answer to the amendment of the complainants herein, Nicholas Hanrick *et al.*, and styled "complainants' amendment to bill," and know the contents, and that the same is true.

E. G. HANRICK.

Signed and sworn to before me this March 5th, 1888.

J. H. FINKS,
U. S. Commissioner.

Endorsed as follows: No. 52. In equity. Nicholas Hanrick *vs.* E. G. Hanrick *et al.* Answer of E. G. Hanrick, one of the def'ts, to "complainants' amended bill." Filed March 5th, 1888. J. H. Finks, clerk.

310 In the U. S. Circuit Court, Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
In Equity.

E. J. Gurley answers to complainants' bill and amendment, filed in this court, they being restatements of and amendments to their pleadings in the State court.

To the hon. judge of said court:

Now comes the def't E. J. Gurley in the above-styled case and says that complainants' special interrogatories propounded to him cover every paragraph in his bill which it is material for him to answer, and he asks that his answer thereto be taken as a full answer to said bill.

To interrogatory first this def't answers and says that paragraphs 1, 2, 3, 4, & 5 of said bill, giving the names & residences of the parties to this suit, the death of Edward Hanrick, his seizen in law of the lands as stated in said bill, the names and pedigrees of his heirs, and the conveyances from Elizabeth O'Brien down to Brady and Kendall, are admitted to be true, except that Edward Hanrick died in the year 1865 instead of in 1866, as stated in said bill in par. 3.

That paragraph 6 of said bill is not true in this, that administration of Edward Hanrick'- estate was never closed, but the records thereof were burned pending said administration and no further steps were taken therein, E. G. Hanrick thereafter managing s'd estate as sole heir thereof, and, not knowing of any other heirs, no steps were taken looking to a distribution of s'd estate; that the lands belonging to s'd estate have never been partitioned in whole or in part amongst the heirs of s'd Edward Hanrick.

311 That complainants were not on s'd 1st day of January, 1875, never have been, and are not now entitled to one-third of the lands described in their Exhibit A. Their interest as heirs of Edward Hanrick was two-ninths of s'd land, or one-third of the balance, after deducting the one-third which Edward Hanrick agreed to give his attorney, as herein afterwards stated, and their s'd two-ninths interest is encumbered with a lien for their proportionate part of taxes and other expenses incurred by s'd estate, and is subject to all sales and conveyances of parts thereof made by them; that this def't did not enter upon said lands on the 1st of January, 1876, & dispos-ess complainants, but he was put in possession of said land by Edward Hanrick, deceased, in 1858, & has been in possession of them ever since that time, and com-

plain*t*ants were not on said land at *that* time stated; that complain*t*ants never demanded possession of s'd lands. The balance of s'd paragraph 6 is admitted. This def't is not interrogated as to paragraphs 7, 8, 9, 10, 11, 12, 13, 14, & 15 of s'd bill and the allegations & charges made therein are immaterial to this def't.

To interrogatory 2 this def't answers and says: That paragraphs 16 & 17 are uncertain, insincere, and evasive in this, that complain*t*ants set up this def't's interest in said lands in a very ind*ef*-erent way and pretended to be ignorant of the nature of his claim. The truth is that this def't owns an undivided one-third interest in s'd lands by virtue of an absolute deed executed on the 24th day of May, 1871, conveying to him said one-third interest by E. G. Hanrick, one of the original heirs of Edward Hanrick, dec'd, whose ownership of & right to convey has never been disputed; and complain*t*ants, notwithstanding their pretended ignorance, knew all about said deed
when they — their said bill, a full copy of the same being a
312 part of the records of this case, attached as an exhibit to this
def't's deposition taken by complain*t*ants in 1881. This def't's right to one-third of said land under s'd deed has been admitted by complain*t*ants in their amended bill, and is not now contested in this case, but they say that this def't's claim is wholly unfounded in law or in equity, "so far as the same relates to or affects the interests of complain*t*ants in this suit," thereby meaning to say that this def't's one-third interest should be taken from the share of E. G. Hanrick, who deeded it to him, and not from the share of all the heirs *pro rata*. This is denied by this def't, and as required he will here state what are the facts about his interest in s'd lands, to wit:

That in 1858 this def't, in connection with William G. Hale, an attorney at Galveston, Texas, was employed as an attorney and agent by Edward Hanrick, dec'd, to take charge of and attend to all his lands in Texas. In 1857 Hanrick & West, attorneys at Austin, Texas, were also employed by him for the same purpose. The said attorneys arranged amongst themselves that William G. Hale should negotiate and agree with the said Hanrick upon a contract for their fees and services. In 1860 s'd Hale & Ranrick met in Washington city and agreed upon the terms of s'd contract, and in 1861 it was written out in full by John Hancock, of the firm of Hancock & West, and signed by s'd Edward Hanrick, Hancock & West, and this def't, and forwarded by s'd Hancock to Mr. Hale for his signature and safe keeping, and has ever since been considered and acted upon as a good, valid, and binding contract. After the death of W. G. Hale, in January, 1876, his papers in reference to Hanrick interests by some means fell into the hands of complain*t*ants' counsel & of Wharton Branch, one of the def'ts herein, and this def't does not know what became of said
contract. It provided in substance that the said attor-
313 neys should take charge, possession, and control of the lands
claimed by s'd Edward Hanrick in Texas and of the title deeds to the same & should institute, prosecute, defend, & compromise any and all suits necessary to perfect and quiet his title

thereto, and for the said services the said Hanrick agreed and bound himself to give them one-third of all they recovered for him and six thousand dollars in money. Up to the time of the death of said Edward Hanrick, in 1865, the parties to s'd contract all acted under it in good faith, and at that time s'd attorney had rendered services to said Hanrick under said contract that were reasonably worth thirty or forty thousand dollars, for which they never received or expected to receive any other re*num*eration other than provided for in s'd contract.

After the death of s'd Edward Hanrick his attorneys believed, in good faith, that E. G. Hanrick was his sole heir, and s'd E. G. Hanrick, in like good faith, believing the same thing, agreed with s'd att'ys that he would, as such sole heir, comply fully with the terms of their said contract with his ancestor, the said Edward Hanrick, and the services of said att'ys were continued in behalf of the estate under s'd contract*ract*. The work and labor hitherto performed by Edward Hanrick now devolved upon his said att'ys, E. G. Hanrick being young and inexperienced, and — became necessary that one of s'd att'ys should abandon his general practice and give his entire time to the Hanrick business, and Hancock & West & Hale proposed to E. G. Hanrick and this def't that their interest in s'd lands under the contract with Edward Hanrick, dec'd, be transferred to this def't, and that he take entire charge & control of the business under s'd contract and pay all att'ys' fees out of his own means; which s'd proposition was agreed to by E. G. Hanrick & this def't, and s'd E. G. Hanrick promised to convey the s'd interest of Hancock & West & William G. Hale to this def't.

314 Afterwards, to wit, on the 24th day of May, 1871, in compliance with s'd contract between Edward Hanrick, dec'd, and his att'ys, and with the arrangements made as above stated, for it*is* better and more effective execution, and in full payment of professional services of s'd att'ys rendered to Edward Hanrick in his lifetime and to his estate after his death, and for all prof*f*essional services to be rendered thereafter to s'd estate by s'd att'ys and others to be employed and pa*ye*d by this def't, the s'd E. G. Hanrick did *sa* sole heir, in good faith, make, execute, and deliver to this def't a good, valid, & absolute deed conveying to him an undivided one-third interest in s'd lands in fee simple, as above stated.

When Edward Hanrick died, in 1865, his title to all of his lands were in dispute and nearly all of said lands were then in litigation and required the immediate & constant attention of competent att'ys, and there never was at any time any money or any personal property belonging to his estate with which to procure such necessary professional services, and his s'd lands, being in litigation, could not be sold or hypothecated for money or in any way utilized in procuring such services, except by giving a part thereof as a contingent fee, and that the said one-third interests in s'd lands given by Edward Hanrick in his lifetime to his s'd att'ys was a just, reasonable and customary fee in such cases and was an incumb*er*ance upon his s'd lands descending with them to his heirs, so that E. G.

Hanrick, as sole heir and being, in fact, at that time the only known & acting representative of Edward Hanrick, deceased, in executing the agreement of his ancestors to give his s'd att'ys one-third of s'd lands as a contingent fee, did the only possible thing he could do to secure the necessary prof*f*essional services in the pending litigation of s'd lands and at the same time discharged an encumb*e*rance
on s'd lands which was binding alike on all the heirs of
315 s'd Edward Hanrick & satisfied the demands which s'd att'ys
would otherwise have made against s'd estate for the value of their services rendered to s'd Edward Hanrick in his lifetime.

The said att'ys, William G. Hale, Hancock & West, and this def't and other att'ys employed & paid by him have rendered their services in good faith to Edward Hanrick & to his estate in compliance with the terms of s'd contract from the time it was entered into to the present time. They have prosecuted and defended about 140 suits involving the titles of s'd lands, many of which were by appeal & certiorari taken to the courts of last resort. In s'd suits *there* were opposed by the best legal talent in the country, were antagonized by the prejudices of the community against the 11-league grants and had to engage in unequal & dangerous strife with large combinations of men, who, with force & arms, resisted the officers of the — in the execution of writs of possession placed in their hands by s'd att'ys and forcibly drove away & burned the houses and fences of tenants put upon s'd lands by s'd att'ys by authority of s'd writs. The records of these suits are in the offices of the district clerks of Falls, McLennan, Milam, Bell, Williamson, Travis, Bexar counties, and of the supreme court clerks at Austin, Tyler, & Galveston, and of the clerks of the United States circuit courts at Galveston and Austin, and of the clerk of the Supreme Court of the United States, at Washington city, D. C.; that this def't's services from 1858 to the present time as att'y and agent for said Edward Hanrick and his estate have been reasonably worth $5,000 per annum, and he has paid William G. Hale $3,500. He also employed William M. Walton, of Austin, to assist him as an att'y in the litigation of s'd lands and paid him $4,500, and F. W. Chandler, and paid $1,000, & Smith & Blackburn, & paid them $300, and D. G. Smith, of Georgetown, &
paid him $2,500, and he has employed Goodrich & Clarkson,
316 of Marlin, to assist generally in all s'd land litigation, and
they and this def't estimate their services at 25,000 dollars.

The att'ys thus engaged in said litigation in behalf of s'd Edward Hanrick and his estate were able, efficient, and learned in the law, and in s'd litigation they have been opposed by 25 or 30 att'ys, several of whom stand at the head of the profession & enjoy national reputation; and with a full knowledge of the history of s'd litigation, of the stubborn & prolonged resistance to the Hanrick titles in s'd suits, and of the forcible means resorted to by combinations of lawless men to neutralize judgments sustaining said titles, this def't safely asserts that all of s'd lands would have been lost to s'd estate but for the brave, persistent, and able efforts of s'd attorneys, whose services were procured and rendered upon their faith in the said contract by and between the s'd Edward Hanrick and his s'd att'ys, and this def't says that the s'd services were in their nature a *lein* upon the lands of s'd estate, which was fully paid and discharged by the s'd deed made by E. G. Hanrick to this def't, conveying to him one-third of s'd lands.

This def't further says that complainants and their ancestor, James Hanrick, under whom *w*hey claim, knew of their relationship to Edward Hanrick and of his death, and that he owned lands in Texas which were in litigation, & that E. G. Hanrick had the possession & control of his estate, claiming to be the owner thereof as sole heir, and as such was conducting said litigation, conveying portions of said lands, assuming and settling the liabilities of s'd estate, and paying the taxes and all other expenses thereof, and that he was to a great expense making valuable & permanent improvements upon s'd lands, and, with reasonable
diligence, they might have known, if in fact they did not
317 know, of the contract by and between Edward Hanrick,
dec'd, & his said att'ys and of the deed made by E. G. Hanrick to this def't and of the services rendered by s'd att'ys & claims & acts of ownership by this def't under s'd contract & deed; and for 13 years, up to the time this suit was brought, in 1878, they acquiesced in the claims of E. G. Hanrick to be the sole heir of Edward Hanrick, dec'd, and in his dispositions & management as such of the property of s'd estate; and in this suit, as their pleadings show, they acquiesce in and expressly ratify and confirm the compromises and sale made by said E. G. Hanrick as sole heir, and accept all the results of the long-protracted & expensive litigation and seek and claim for themselves all the benefits they possibly can from the labors of the s'd E. G. Hanrick & s'd att'ys, but refuse to pay any part of the taxes upon s'd estate from the time of the death of Edward Hanrick to the present or any part of the court costs & other expenses of s'd litigation or to contribute out of their share to the one-third interest of this def't; wherefore by their acquiescence, ratification, & confirmation this def't says they are forever estopped from disputing any of the acts of E. G. Hanrick as sole heir, and by claiming the benefits of the professional services of this def't & his associate counsels the rule "equity for equity" requires them to contribute their share of the one-third interest deeded to this def't by E. G. Hanrick in payment for s'd services. This def't further says that Edward Hanrick in his lifetime put this def't in actual possession of his said lands, and he has had & held actual possession thereof from that time to the present; that after the s'd contract was made as aforesaid by and between s'd Hanrick & his att'ys and upon the faith of s'd contract this def't made valuable
& permanent improvements upon s'd land, claiming for
318 himself & his associate counsels an undivided one-third inter-
est therein, and in good faith believing that they had such interest under s'd contract, and in like good faith this def't continued to make such improvements upon s'd land after the death of Edward Hanrick and after the s'd one-third interest was conveyed to this def't by E. G. Hanrick, and he also in good faith paid one-third of the taxes upon s'd land from and after the death of s'd

Edward Hanrick to the present time, believing himself to be the owner of s'd one-third interest under the s'd contract; and this def't & those whose estate he has and holds to his one-third interest have had and held the peaceable, continued, uninterrupted, & adverse actual possession thereof, claiming the same under title & color of title by a regular chain of transfers from or under the sovereignty of the soil down to him for three years & more next before this suit was brought against him, and he has had and held like possession thereof, cultivating, using, & enjoying the same for ten years & more next before this suit was brought against him; wherefore the claims of the complainants, if any they had, to s'd one-third interest in s'd land are forever barred.

And this def't further says that the s'd contract by and between the s'd Edward Hanrick and his att'ys, as above stated, was placed in the hands of Wm. G. Hale for his safe keeping, and that he in good faith rendered his professional services to Edward Hanrick & to his estate in accordance with the terms of s'd contract *op* to the time of his death, in January, 1876; that s'd contract has been lost or destroyed, & this def't has made due and diligent search for it & has caused such search to be made amongst the papers of s'd Hale and at all other places where he could reasonably expect it to be found and has not been able to find it, & he therefore asks that he be allowed to prove the contents of it in the trial of this case.

Such are the facts demanded of this def't by s'd interrogatory,
319 and to the best of his knowledge, information, and bel*eif*
they show that this def't's one-third interest is not a charge upon E. G. Hanrick's share in s'd estate alone, but upon the shares of all the heirs *pro rata*—

First. Because this def't had an equitable title to his one-third interest under the contract with Edward Hanrick, dec'd, & the possession, improvements, & services under it, which was an incumb*e*rance upon s'd lands.

Second. Because the services rendered by s'd att'ys were necessary to the preservation of said lands to s'd estate, and there was no means of procuring s'd services except by carrying out in good faith the s'd contract of Edward Hanrick, dec'd, by conveying to this def't his s'd one-third.

Third. Because E. G. Hanrick's deed to this def't was in payment for services rendered to Edward Hanrick in his lifetime and to his estate, and complain*t*ants by their acquiesence are barred from disputing his right to pay said debt in that way.

Fourth. Because complain*t*ants ratified and confirmed the compromises and other acts of s'd att'ys & E. G. Hanrick and accepted all the benefits of s'd professional services and thereby are bound to contribute their part to the payment for s'd services or to this def't's one-third interest.

Fifth. Because this def't has a good and valid statutory title by limitation to his one-third interest independent of s'd deed from E. G. Hanrick, and s'd interest is no part of s'd estate to be considered by the heirs thereof except for purposes of partition.

Sixth. Because the s'd contract of Edward Hanrick to give his

s'd attorneys one-third of his lands and the s'd professional services of s'd att'ys were liens & encumb*e*rances upon s'd lands, which were discharged by the deed of E. G. Hanrick to this def't,
320 & & to which discharge all the heirs are alike bound to contribute.

This def't admits the further statements in paragraphs 16 & 17 of s'd bill to the effect that he acted as the att'y of E. G. Hanrick, who claimed to be the sole heir of Edward Hanrick, and assisted him in selling land and signed some of the deeds; that none of s'd land was ever assessed for taxes in this def't's name, and that his deed to his one-third interest was not of record. The fact is that all the business of the estate was carried on in the name of E. G. Hanrick as sole heir up to the time this suit was brought, because the legal title was thought to be in him. Although this def't had an absolute deed to his s'd one-third interest, it was coupled with a contract for services not then fully rendered and was then an equitable title only, and for that reason it was not recorded, but it was well known in the country that this def't had an interest in s'd lands, and complain*t*ants could easily have learned all about this def't's claim; in fact, they did know about the time they brought this suit that this def't claimed one-third interest in s'd lands under a contract with Edward Hanrick, dec'd, because this def't so informed King & Belcher, their att'ys, by letter, and he knows that they rec'd said letter. All the balance of sections 16 & 17 *are* wholly untrue. The facts are that this def't's one-third interest has never been otherwise than nominally involved in this suit, since the deeds of E. G. Hanrick to this def't cannot be disputed, and this def't has never entertained or expressed any doubt about his own title to one-third of s'd land; but as the att'y of E. G. Hanrick in this suit this def't was at first uncertain whether his client would, under the evidence, take his share of the lands or the value of the professional services which he had paid for with his interest in s'd lands, and the bearing which the contract of Edward Hanrick had
321 upon this point led to the conversation & statements referred to by complain*t*ants, and they are charged as the statements of this def't as to his own interests when they were made with — to the interests of his client.

To interrogatory 3rd this def't answers and says—

That paragraph 17*a* is wholly untrue. The facts are that previous to the year 1878, when this suit was brought, complain*t*ants made no demand for or effort to take possession of s'd lands. They did not reside or have any agent in Texas, as they themselves state in paragraph 22. In bringing this suit, which was originally one of trespass to try title, they elected to be and remain out of possession of said land until the legal question of title was decided, since such suit cannot be brought and maintained by a party in possession of the land, and beside the s'd E. G. Hanrick had complied with the terms of the contract made by Edward Hanrick by conveying one-third of s'd lands to this def't in his own name and had paid all taxes, costs, and other expenses that were liens upon s'd land, and he was entitled to retain the possession of the same until complain*t*ants contributed or agreed to contribute their *pro rata* share towards the discharge of said incumb*e*rances.

This they have heretofore refused and still refuse to do, but notwithstanding all this complain*t*ants have, in fact, ever since this suit was brought been making entries upon s'd lands and taking possession of portions thereof, using and enjoying the proceeds thereof, and where they have entered upon unimproved land th-y have not been interfer*r*ed with by E. G. Hanrick or this def't. The suit of forcible entry & detainer to which they refer *were* brought against them by E. G. Hanrick to recover from them his improved place, which they were attempting to take from him & *and* appropriate to their own use.

322 This *the* def't admits that he prohibited one Eubank, who was complain*t*ants' agent, from going upon s'd lands for the purpose of appropriating or in — way control-ing the same, because s'd Eubank greatly annoyed E. G. Hanrick by going on his farm and prohibiting his tenants from paying him his rents and by renting & selling portions of s'd farm, and because he sold this def't's sheep ranch and attempted to survey and deliver the same to the purchaser, and because he habitually rode around and about the premises of s'd Hanrick & this def't armed with a Winchester rifle and was considered by his neighbors as being partially insane and dangerous. Paragraph 18 is wholly untrue. The facts are that the unimproved lands were open to the use of the public generally, including complain*t*ants, & the rents and profits were of no value.

The improvements on said lands not held adversely to all the parties herein belonged to E. G. Hanrick & *and* to this def't, & the complain*t*ants had no interest in the rents and profits thereof.

Paragraph 19 is untrue. The facts are that E. G. Hanrick & this def't have never sold any timber off of s'd lands, but at considerable expense and trouble have protected the same against trespassers.

Paragraph 22 is true as to the residence of the parties named & the administration of E. G. Hanrick upon s'd estate & his taking the possession thereof. As to the balance of s'd paragraph the facts are that E. G. Hanrick, as this def't is informed & believes, at the time he took out letters of administration upon the estate of Edward Hanrick knew nothing about Eliza O'Brien, James & John Hanrick, of Ireland; that s'd administration was never formally closed, but the record were burned and no further steps were taken thereafter. No application was ever made to distribute the property to the heirs
and no proceedings *was* had in said administration in which
323 it was necessary or proper that the heirs should be brought
into said proceedings or that information of their existence should be made known to the probate court, and if it had been necessary it could not have been done, because neither E. G. Hanrick or this def't at that time knew anything about them. Neither E. G. Hanrick or this def't concealed anything from them or from the probate court.

Paragraphs 23 to 36, inclusive, setting out the various tracts of land convened by metes and bounds by E. G. Hanrick as sole heir of Edward Hanrick to different parties by way of compromise and sale before this suit was brought, are true as to the facts therein stated, except that the tract conveyed to Baker, as stated in page 26, was not for any money consideration, *d*ut was given in exchange for stock in the Belville, Hempstead & Brazos Bridge Company, which s'd stock was entirely lost by s'd bridge being washed away. The values of the lands, as stated in s'd paragraphs, are not admitted, but proof thereof will be recognized at the proper time. Complainants in their prayer ask that the several tracts of land be partitioned in this case and set apart to the defendants, which this def't says cannot legally be done, because said tracts of land are claimed and held in actual possession of various parties who are not parties to this suit and who so hold and claim the same adversely to all the parties herein.

The parties so holding and claiming are the parties named in the s'd several paragraphs by complainants as grantees of E. G. Hanrick, and this def't says that they have held the peaceable, continuous, actual, adverse possession of s'd lands, claiming the same under title or color of title by a regular chain of transfers from the sovereignty of the soil down to themselves for three years &
324 more, and they have had like possession of s'd lands, using the same and paying the taxes thereon, claiming under deeds duly registered for five years & more, and they have had like possession of s'd lands, cultivating, using, and enjoying the same for ten years & more.

Wherefore this def't says they have good and solid statutory titles to s'd lands, & none of the parties *and none of the parties* to this suit have any interest therein or any interest in the value thereof, directly or indirectly. This def't further says that complainants and those claiming under Elizabeth O'Brien have acquiesced & ratified & confirmed the s'd conveyances made by E. G. Hanrick to s'd parties, and therefore have no interest in s'd lands & no claims to the same, directly or indirectly, but if, in the judgement of the court, s'd lands be considered as subject to a partition in this suit, then this *the* def't asks that the same be set apart to E. G. Hanrick, who conveyed the same & to the complainants and to the def'ts claiming under Elizabeth O'Brien, who have confirmed s'd conveyances, and that this def't have the value of his one-third interest in s'd lands & other lands of s'd estate.

Paragraph 37 is not true as to the value of s'd land or the interest of the parties or as to the probable results of this partition.

Paragraph 38 is true in part only; the fact is that E. G. Hanrick and this def't have deeded certain portions of s'd lands, as stated, but they did it in pursuance of agreements written on parol made by them before this suit was brought.

Paragraph 39 is not true. E. G. Hanrick and this def't are not cutting and selling timber off of said land, but are trying in vain to protect the same a*f*ainst those holding under complain*t*ants & the def't Brady. Neither are they insolvent, as charged by complain*t*ants.

325 Paragraph 40 is true in regard to sales having been made by William Brady, but this def't denies that s'd sales affect any partition of s'd lands so far as *as* E. G. Hanrick and this def't are concerned, and they do not in any manner confirm s'd sales or relinquish their interest in the lands so sold or conveyed by William Brady.

This def't does not admit that s'd Brady has conveyed less than his share of s'd lands as stated, and he does not know what are the facts about this.

Paragraph 41 is true in part only. It is true that complainants have not asked for a partition of the Aguirre 10 leagues of land, situated in Williamson county, in this suit: but it is not true that s'd lands cannot be herein partitioned because of its being held adversely to all the parties herein. The facts are that the s'd land is a part of the estate of Edward Hanrick, & the rights & interests of the parties to this suit in & to the same have been & *is* being litigated herein just as their rights & interests in the other lands of s'd estate are litigated, and it is not for the complainants to determine which of the tracts of land belonging to s'd estate & involved in this suit shall and which shall not be partitioned. Whilst it is true that nearly all of s'd land is held adversely to the parties to this suit, the greater part thereof is held under conveyances made by the parties herein, and all the rights and equities of all the parties and of those holding s'd lands under them can be fully & fairly adjusted in a partition of all the lands belonging to s'd estate & involved in this suit, and this cannot be done by separate partitions, because William Brady, one of the def'ts, has sold and conveyed nearly all of s'd land in Williamson county by metes and bounds
and warranted the titles against all others claiming s'd lands
326 under Edward Hanrick, and he promised the purchasers
thereof to have s'd lands partitioned to them or to himself
for their use and benefit, and the interest for s'd William Brady in the other lands of s'd estate is equitably bound for the excess of the sales made by him in Williamson county, and in order that they be so held all s'd lands should be partitioned in this suit. The names of the s'd purchasers from Brady are given in the answer of E. G. Hanrick, which answer is so far here adopted as part of this; and this def't says that the s'd purchasers from s'd Brady are necessary parties to this suit.

Paragraph 42 is true in this, that complainants brought suit for one-third of s'd Aguirre 10 leagues against E. G. Hanrick and recovered judgment as stated, and that a large — of s'd lands was then held adversely to all the parties to this suit; but since then most of those so holding have bought s'd lands from the parties to this suit or from some of them, & the facts now are as stated in answer to par. 41 next above.

Paragraph 43 is true in so far as it states that E. G. Hanrick, as sole heir of Edward Hanrick, sued 90 or more of those claiming parts of those Aguirre 10 leagues adversely to the Hanrick estate; but he did so in good faith, believing that he was the sole heir and knowing but little of any relations of Edward Hanrick, dec'd; and it may be true, as complain*t*ants say, that they knew nothing of their own right under the law, but they did in fact know the material facts upon which their rights were based. They knew of the death of Edward Hanrick & *and* of their relationship to him; that he owned lands in Texas; that his titles thereto were litigated, and that E. G. Hanrick was claiming and managing his estate as the sole heir thereof, and they made no objection to the bringing of s'd suits or to the manner in which they were brought.

327 Paragraph 44 is true in so far as it states that the s'd 90 or more def'ts claimed s'd lands under pre-emption & certificate locations, but it is not true that they had title by limitation against complainants when they sued E. G. Hanrick for a $\frac{1}{3}$ interest in s'd Aguerre lands. The facts are that a very large portion of them held under pre-emption claims, which do not support the 3 years' statute of limitations, & many of those who claimed under certificate locations were not in actual possession of the lands upon which they had located, and complainants were not then barred by limitation.

They had permission of the court, as the record shows, and consent of this def't & E. G. Hanrick to intervene and assert their rights in s'd suits, but did not do so, and if they *had* were barred by limitation it was by their own laches. This def't says they did not intervene in s'd suits because they found that they could sell said lands to the def'ts, and by warranting the title against all others claiming under Edward Hanrick they could convert s'd lands into money, and they sold their interest to the def't William Brady, & he sold to s'd def'ts and has rec'd from them the purchase-money and made them deeds of special warranty against all persons claiming under s'd Edward Hanrick, dec'd.

Paragraph 45 is true. Complainants have conveyed their interest in said Aguirie lands to Wm. Brady.

Paragraph 46 is not true in its statement to the effect that the Hanrick title to the Agurre 10 leagues in Williamson county is null & void and that the original grant to Aguirre is a forgery.

The facts are that the s'd original grant has been decided by the supreme court of Texas to be good and valid in every respect in the case of Hanrick *vs.* Jackson. After that decision was rendered the 90 or more def'ts in the suit in the district court of Williamson county formed a combination by means of which *by which* they have succeeded in procuring verdicts of juries in two cases against s'd title.

328 These two cases upon appeal to the supreme court were tried by special courts, two of the supreme judges being disqualified, and these two courts sustained the s'd verdicts without expressing any opinion as to the validity of s'd title. Since then all s'd cases in Williamson county have by change of venue been transferred to Travis county, and this def't expects henceforward to have fair trials of the same in the court below & in the supreme court, and he *he* is confident that s'd title will be sustained, because under the rulings of the Jackson case it is perfect. The only vice now charged against s'd title is that of forgery, which is an impossi-

bility, because the alterations charged to be forgery are all fully and fairly noted and explained at the bottom of s'd title and above the genuine signature of the officer who executed it, as stated by the supreme court in the s'd Jackson case.

And this def't further says that the complain*t*ants are estopped from denying the validity of s'd Aguirre title, because in this suit they are claiming their rights to s'd lands under it and because they sued E. G. Hanrick, as they state in their bill, for their ⅓ interest in s'd lands under s'd title & obtained a judgement for the same, which s'd judgement they set up in this case & claim for themselves all the benefits possible under it, and because, as they state in their bill, they have sold and conveyed s'd lands as a part of the estate of s'd Edward Hanrick to the def't William Brady, who by virtue of s'd sale & of his own interest in s'd lands has sold by metes & bounds to the s'd 90 or more def'ts and agreed with them that he would perfect their title by a partition, and has brought a suit for that purpose, which is now pending in the district court of Williamson county, and for the same reason next above set forth the
329 s'd complainants are also stopped from resisting a partition
of s'd lands in this case or in any case in which such partition can fairly be made.

Paragraph 47 is true in so far as it states that Wm. Brady brought suit against E. G. Hanrick & this def't in Williamson — for a partition of s'd land, and that they resisted s'd partition because s'd lands were held adversely to both pl't'ffs & def'ts in s'd suit, but it should have been stated clearly & definitely in s'd paragraph that the parties so holding & claiming adversely were not made parties to s'd suit and for that reason s'd resistance was made. The further fact also should have been stated that s'd Brady in s'd suit claimed all the land sold by him should be included in his share, which would have given him largely more than his *pro rata* of s'd land.

Paragraph 47*a* is true. Pl't'ffs were nonsuited in that case, and, as they say in paragraph 47*b*, they did soon afterwards bring another suit against E. G. Hanrick & this def't in the same court & for the same purpose, which is still pending. The purpose of s'd — is apparently to perfect the title of those to whom s'd Wm. Brady conveyed s'd lands by having the same set apart to him in partition, but this def't says that cannot legally be done in that suit because that court has no jurisdiction of the lands involved in this case, except the s'd Aguirre 10 leagues, to give any part of them to E. G. Hanrick & this def't in lieu of the excess asked for by s'd Brady in s'd suit.

The truth is that this def't believes & charges that complain*t*ant- & s'd Wm. Brady have conspired together to defeat any fair partition of s'd lands in Williamson county, because they have sold nearly all of s'd lands and rec'd the money for the same, and because in any fair partition their interest in other lands will
330 be held as an indemnity for their s'd excessive sales of land
in Williamson county.

Paragraph 48 is true. S'd Brady has not pressed s'd suit for trial, but this def't does not believe that the true reasons for not doing so are all given; this def't believes and charges that s'd Brady seeks to partition s'd estate by fragments in order to evade the responsibility of his s'd excessive sales.

To interrogatory No. 4 this def't answers and says—

That complainants were not prevented, during the time mentioned, from taking possession of s'd lands by E. G. Hanrick & this def' t, but, to the contrary, they made frequent entries upon the same, and so far as this def't is informed they were not interfer*r*ed with except when they attempted to take & appropriate to their own use the improvements belonging to s'd Hanrick & this def't.

To interrogatory No. 5 this def't answers & says—

That complainants, without consulting E. G. Hanrick or this def't, elect*ud* to consider them as being in the exclusive possession of s'd lands in order to have a legal basis for this suit of trespass to try title, without which it could not have been brought and maintained.

And s'd Hanrick & this def't accepted the position and did claim during s'd time to have the exclusive possession of s'd lands.

The suits of forcible entry & detainer referred to were brought for improved places belonging to s'd Hanrick & this def't.

To interrogatory No. 6 this def't answers & says—

That complainants never asked to be admitted into the possessions of s'd lands; they chose to be & remain out of possession & bring this suit to recover their entire original one-third interest in s'd land without contributing any part thereof towards the payment of att'ys' fees, court costs & taxes, and other expenses
331 incurred and paid by E. G. Hanrick & this def't in perfecting the titles to s'd lands, but s'd Hanrick & this def't did claim to have the exclusive possession of s'd lands, and they say that complainants never had & have not now any equitable right to the possession thereof because they have refused and do refuse to contribute to the discharge of l*ei*ns & incumb*e*rances on s'd land that have been paid or lifted by E. G. Hanrick & this def't, and are now held as equitable demands upon them and their s'd interests. Complainants have come into possession of s'd lands by virtue of a writ of possession issued in case No. 14 on the law side of the docket of this court, in which case these equities could not be set up.

That during the time enquired about complainants did, in fact, take possession of various portions of s'd land, and in no case have they or those holding under them been ejected from s'd land by suit or otherwise.

To interrogatory No. 8 this def't answers & says—

That the statements required are attached as exhibits to the answer of E. G. Hanrick and are here adopted by this def't as a part of this answer.

This def't objects to the prayer of the complainants' s'd bill for the following reasons:

1. It asks for the partition of land that does not belong to the estate of Edward Hanrick & in which they have no interest.

2. It asks for the partition of lands held and claimed by persons who are not parties to this suit.

3. It does not ask for a partition of all the lands belonging to the s'd estate or of all the lands involved in this suit.

4. It does not ask that the ⅓ interest of this def't be set apart to him in this partition.

332 5. It does not ask that the taxes, costs, & other expenses that were l*ei*ns upon s'd lands & were paid by E. G. Hanrick shall be settled in s'd partition.

This def't, further answering, and with especial reference to complainants' amendment, so called, to their bill filed Feb'y the 6th, 1888, says—

That it is true, as stated by complainants, that the agreement between Edward Hanrick, dec'd, & his s'd att'ys was executory, but he denies that it was in any way affected by its not having been established during the administration which was commenced upon said estate.

On the contrary, he says that with or without an administration and independent of any action by the administrator or by the probate court s'd contract was binding alike upon all the heirs of Edward Hanrick, dec'd, and those claiming under them; and when E. G. Hanrick, the only known & acting representative of s'd Edward Hanrick, made a deed to this def't, in compliance with the contract of his ancestors, he only did what all s'd heirs & those claiming under them were legally bound to do and what this court would now compel them to do if it were necessary for the protection of the rights of this def't under s'd contract. This def't does not know what complainants mean by saying that this contract is a stale demand barred by laches, &c. It is not set up as a demand against complainants or against the estate of Edward Hanrick, as such demand is *functus officio*, having been fully executed, satisfied, and discharged b*u* the deed of E. G. Hanrick conveying to this def't his one-third interest in said lands in accordance with its terms.

If complainants mean that E. G. Hanrick's claim against them for contribution to the one-third interest which he deeded to
333 this def't in satisfaction of s'd contract is a stale demand, it is denied, because s'd contract was an encumb*e*rance upon s'd lands; and E. G. Hanrick having discharged the same & having had & held the possession of s'd lands from the time of s'd discharge to the present, he has not been guilty of laches, and complainants cannot, in equity, take their s'd interest in s'd lands without contributing their part to the discharge of s'd incumb*e*rances.

This the def't says it is not true that more than 20 & 10 years have elapsed since the services were performed under said contract; on the contrary he says that he and other attorneys have been rendering the services provided for in said contract from its date to the present time. Complainants say that this def't's services & the s'd deed of E. G. Hanrick in payment for the same are not entitled to recognition because he did not inform the probate court of the existence of other heirs or have them brought into s'd court or notify them of s'd administration, and because he claims to have been the att'y of all the heirs & instigated E. G. Hanrick to resist their rights,

& because his att'y for that purpose — and conspired with him to defraud them of their rights; to all which this def't answers that at the time of s'd administration he did not know of any other heirs to s'd estate except E. G. Hanrick; that s'd administration was abandoned without any steps having been taken to distribute the property of s'd estate; that he does not claim that he was the att'y of all the heirs other or further than that he was the att'y of the estate and of E. G. Hanrick, the administrator; that he did not instigate E. G. Hanrick to resist the complain*t*ants' demands, but refused to represent him in this case, and he employed other counsel, and this def't wrote to complainants' counsel that he had been employed by Edward Hanrick in his lifetime & *and* then represented his estate and preferred to occupy that position, and that if 334 they would recognize his fee of one-third he would take no part in the controversy amongst those claiming as heirs, but would continue to manage s'd estate to the best interest of those to whom it belonged. Complain*t*ants refused to do this & denied this def't's claim. This refusal & denial released this def't, as the att'y of s'd estate, from all obligation to complainants, if in fact any ever existed, and, as the protection of his own one-third interest required him to resist the claims of complainants, he did so in his own interests, and also accepted a fee from E. G. Hanrick in this and other cases for the same purpose. It is true, as stated by complainants, that said resistance was fierce, stubborn, and prolonged, and has been continued since the supreme court of Texas decided that complainants were heirs to said estate. But said continued resistance is made necessary by the unreasonable demands of complainants for this: that when said decision was rendered E. G. Hanrick and this defendant offered to accept the same as final if complainants would recognise this def't's interest as a claim against said estate. Complainants' att'ys refused to do this and said they would agree to no settlement that did not secure to their clients and to the defendants who claim under Elizabeth O'Brien their entire two-thirds interest in said lands free from all claims for professional services, taxes, costs, & other expenses of s'd estate, & they have never modified their s'd demands, but are now here pressing them upon this court, and (since E. G. Hanrick has conveyed to this def't the one-third that they are willing to allow him) if their demands are allowed it will not only leave him penniless, but many thousand dollars in debt for money borrowed to defray the expenses of s'd estate in carrying on the litigation of s'd lands.

The charge of fraud and fraudulent conspiracy made by 335 complainants against this def't is based upon his acts as the att'y of E. G. Hanrick, & neither one of s'd acts nor all of them combined justify or excuse any such charge of professional fraud.

This def't says that he has devoted the best years of his life to the management of s'd estate and to the litigation of said lands, and he has heretofore in this case challenged, and does now challenge, the most rigid investigation to show a single instance in which he has betrayed or taken advantage of the unlimited trust reposed in him.

This def't, further answering, says that the allegations in s'd amendment to complainants' bill as to possession, use, occupation, and ejection by suits of forcible entry and detainer are but reiterations of the same charges made in the s'd bill, and they have been fully answered.

And as to complainants' plea of limitation of 2, 5, & 10 years, and his charge of laches, he says that the claims to which they are interposed are liens upon the lands of s'd estate, and until complainants pay their part thereof are not entitled to the possession to, or partition of, their s'd interests; and, further, that since s'd claims have existed there has been no other representative of s'd estate but himself until this suit was brought, & complainants have since then refused to settle s'd claims.

This defendant denies that the improvements made upon s'd lands were made without any cost or expense to E. G. Hanrick & this def't. The facts are that the s'd Edward Hanrick, in his lifetime, authorized this def't to improve, for his own use so much of the s'd Pedro Zarza five leagues as he wanted for farming & grazing purposes, & provided him a deed to the same, and he, in good faith, under this promise, began to improve s'd lands, & *and* at the time of the death of s'd Edward Hanrick he had a farm upon s'd land of his own & was enjoying the proceeds
336 thereof. After his death this def't contrived to improve s'd lands with the knowledge & consent of s'd E. G. Hanrick, who this def't believed in good faith was the sole heir of s'd Edward Hanrick, dec'd, and has so continued to improve s'd lands to the present time.

That he has cleared up and put into cultivation about 1,000 acres of s'd land, built many dwelling and out houses, and erected thereon a steam-engine, gin-house, press, & mill, and has established a stock ranche on s'd land & built the necessary sheds and fixtures, and built tanks about on s'd lands for watering purposes, and that the aggregate value of improvements is $30,000; that this def't made s'd improvements in his own right, believing that he owned a one-third interest in s'd land, and he says that after E. G. Hanrick made s'd deed to him he was, in fact, the owner of s'd one-third interest; that the land so improved is that part of the Zarza five leagues fronting on the Brazos river and extending back to the Port Sullivan road, and contains about 5,000 acres, and this def't has a deed to the same from E. G. Hanrick by metes & bounds excepting certain tracts thereupon which had been conveyed to other parties & do not belong to s'd estate; that this def't has had and held in his own right & title the peaceable, continuous, adverse, actual possession of s'd lands by metes & bounds as above set forth, and of his said improvements thereon, cultivating, using, & enjoying the same for ten years & more next before this suit was brought against him.

That this def't & E. G. Hanrick as cotenants together, improved the balance of s'd five leagues by clearing up the same, or a large part thereof, & building houses, tanks, & digging wells, and s'd improvements are also reasonably worth $30,000, and were made in good faith under a claim of ownership & under a good 337 and valid title to an undivided interest in s'd lands, and before complainants asserted any claim to any interest in s'd estate, and in good faith believing s'd E. G. Hanrick to be the sole heir thereof.

Therefore this def't says that complainants have no interest, right, title, or claim to s'd improvements, and that the s'd lands upon which they are located should be set apart to this def't and s'd E. G. Hanrick, and also the lands belonging to s'd estate adjoining s'd improvements & covenants to the use & purposes of s'd Hanrick & this def't, because he says that the value of s'd lands are not equal to their shares and can thus be set apart to them without injury to any other of the parties to this suit, there being enough land elsewhere to satisfy their claims; and if any part of the s'd lands thus improved be set apart to other of the parties & not to E. G. Hanrick & this def't, then they should have pay for their s'd improvements.

This def't asks that this his answer to complainants' bill and amendment be taken as an answer to the same and to each and every statement thereof, as it has been or may hereafter be adopted by any of the parties to this suit or in any manner used in this case.

E. J. GURLEY.

I, J. E. Gurley, upon oath do say that the above and foregoing answer is true in so far as it states facts within the knowledge of affiant, and as to all facts stated upon information I believe them to be true.

E. J. GURLEY.

Subscribed to and sworn to before me this the 23rd day of March, 1888.

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

338 The foregoing is endorsed as follows, to wit: No 52. Equity. Hanrick *et als.* *vs.* Hanrick *et als.* Answer of E. J. Gurley, defendant. Filed March the 23rd, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

339 Field-notes of that part of the La Serda in conflict with the T. J. Chambers.

Beginning at the lower corner of the La Serda on the east bank of the Brazos river, thence N. 62 E. with the lower line of the La Serda — vrs. to a point of intersection with the S. E. line of the T. J. Chambers; thence N. 45 E. with said S. E. — vrs. to the east corner of the T. J. Chambers, from which a mesquite tree 14 inches in diameter, marked C, brs. S. 41 and $\frac{3}{4}$ W. 70 vrs. and a post oak 14 inches in di., marked C, brs. N. 68 W. 134 and $\frac{3}{5}$ vrs.

Thence N. 45 W. with the S. E. line of the T. J. Chambers at 2,910 vrs. to bed of McClanahan branch at 3,100 vrs. 2d bed of Keechi creek at 3,860 vrs. & 3,920 vrs. cross & recross Keechi creek, and at 4,002 vrs. — a stake in the south line of the Jose Antonio Manchaca; thence S. 62 W. with the upper line of the La Serda at 14 vrs. to the bed of Keechi creek and at — vrs. the N. W. corner of the La Serda on the east bank of the Brazos river.

Thence down the east bank of the river with its meanderings to the place of beginning.

It is agreed that the above field-notes correctly described that part of the A. de la Serda grant, so far as the same conflicts with the T. J. Chambers ten leagues and is the territory involved in the litigation referred to in paragraphs 27, 30 & 31 in complainants' bill; and the facts in regard to said litigation are correctly stated and admitted in paragraphs 25, 30, & 31 of the answer of deft. E. J. Hanrick.

2. And as to that part of the said La Serda grant lying east and south of the Chambers grant it is agreed as follows, viz:

a. That the tract of 89 acres conveyed by deft Hanrick to A. H. Rippetoe and described on page 11 of exhibit attached to answer of said Hanrick was conveyed in consideration of release by
340 said Rippetoe to Hanrick of an equal number of acres of land, the land so divided being all that part of the T. S. Grant patented survey which conflicts with the La Serda grant and which said Rippetoe had title nor did said Hanrick give or receive any other or different consideration.

b. As to that part of the G. Duncan patented survey which conflicts with the La Serda and fully described in said exhibit on page 12, the same was entirely lost to the Hanrick estate by adverse possession and has not been conveyed by deft Hanrick.

c. The same facts are true as to the 57-acre tract in the name of Barclay described also on page 12.

e. As to the tracts in the name of L. D. Forbes, described as No. 25 on page 14 of said of said exhibit.

h. And the tract of 150 acres in the name of L. D. Forbes and designated as No. 30, page 50, of said exhibit.

k. And the tract of 395 acres in the name of J. F. Erskine and designated as No. 37 on page 53 of said exhibit.

l. As to all of said tracts *e*, *h*, *k* it is agreed that the grantees therein named were at the time said conveyances were made in the actual possession of the said several tracts respectively and claiming title under the conflicting patented surveys in the names of Stephen Beasly, W. Peterson, Jarrett Menefee and W. Massie, and that said conveyances were made in compromise settlement of said adverse claims, which were of long standing. The same facts are also true as to the tracts of 2,642 acres in the name of Catherine Cavitt, designated as No. 3 on page 11 of said exhibits, and also as to the tract of 31 acres in the name of G. W. Parton, and designated as No. 5 on page 11 of said exhibits, and as to all of said tracts the right of parties to this suit are barred by adverse possession. As to the tracts No. 8, in the name of B. F. Williams, No. 9, in the 341 name of Sam. Bell, and No. 10, in the name of C. R. Long, all described on page 43 of said exhibits; No. 20, in the name of M. J. Torey, described on page 46 of said exhibits; No. 32, in the name of J. R. McClanahan, described on page 51 of said exhibits; No. 41, in the name of Floyd Smith, and No. 42, in the name of W. D. Barton, both described on page 54 of said exhibits; No. 44, in the name of F. F. Green, and No. 45, in the name of James Taylor, both described on page 55 of said exhibits; No. 46, in the name of James Garrison, and 47, in the name of John Yates, both described on page 56 of said exhibits; No. 53, in the name of J. N. Adams, described on page 58 of said exhibit-; No. 57, in the name of V. B. Ritter, described on page- 59 & 60 of said exhibits. As to all of said tracts No. 8, 9, 10, 20, 32, 41, 42, 44, 45, 46, 47, 53, 57 & 94 the grantees therein and those who preceded them were occupying said tracts without title or right, except as squatters, with small improvements made by them at and before the date of said sale to them by def't Hanrick; nor were they or any of them let into possession by him, and said persons have each for themselves continued to hold possession, claiming as owners.

And as to the following tracts designated in the said exhibits by numbers as follows, viz: No. 12, 13, 14, 18, 21, 28, acre tract- in No- 22, 23, 25, 27, 28, 33, 34, 35, 36, 40, 43, 48, 49, 50, 51, 52, 54, 55, 56, 58, 59, 62, 95 def't Hanrick had, claiming to be the sole legal heir, sold to said grantees and put them in possession at the dates stated in said exhibits, and said persons had in good faith, supposing said def't Hanrick to be sole heir of Edward Hanrick, deceased, bought of him and taken possession previous to the 17 day of Dec., 1878, for themselves, and have since continued to hold. And as to the following tracts designated by numbers, viz: No. 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 77, 78, 81, 91, 96, the same were contracted to, at the date stated in said exhibit, *to* be sold by def't Hanrick 342 to the grantees therein named, who went into possession and made improvements prior to March, 1882.

It is agreed that the facts stated above are true, and it is further agreed that def't Hanrick received, as consideration for sales made by him, the sums set opposite the names of each grantee as follows, viz:

No. 15.	L. O. Forbes	$1,445 00
" 30.	L. D. Forbes	337 50
No. 30.	Rob't Smith	855 00
No. 22.	R. J. Garrett (218 acres)	654 00
No. 29.	R. J. Garrett	750 40
No. 37.	J. F. Erskine	1,447 90
No. 24.	W. M. Stohl	282 00
No. 3.	Catherine Cavitt	1,320 00
No. 5.	G. W. Parton	93 00

It is also agreed that as to the tract of land described in paragraph 26 of complain*t*ants' bill the same was held and occupied from a time anterior to the late war by parties claiming under the Cham-

bers title; that the said land was by sale and deeds finally transferred to one C. Baker, who held under said Chambers title, and on the — day of ——, 1875, the def't Hanrick made a deed conveying said land to Baker, and Baker gave Hanrick in consideration stock in a toll-bridge at Hempstead of the nominal or face value of $8,000.00; that said bridge was very soon after washed away by high water and the value of the stock was entirely lost. Hanrick received no other consideration at the time of said transaction; the said Baker was in possession, holding under deeds which conveyed to him the said land through intermediate parties from Chambers. It is also
agreed that as — the six tracts of land mentioned in para-
343 graph 27 of complainants' bill the said J. S. Jones was and
had been for many years in the actual possession of all of said tracts of land under regular transfers by deed from T. J. Chambers, and that — the time stated in said paragraph he did pay by way of compromise settlement with E. G. Hanrick the sum of $2,554.00 and Hanrick made him a quitclaim deed to said six tracts.

It is agreed that the improvements made by E. G. Hanrick on his home place are of the character and value stated on page 23 of exhibits filed Jan. 2, 1888. It is agreed that the improvements described on page 25 of above exhibits are of the character therein stated, and that with few trifling exceptions the same were made by the tenants of E. G. Hanrick in consideration of the use and occupation of same and contiguous land under contract with Hanrick, he being at no expense except to care for and control the same.

It is also agreed that the def'ts E. G. Hanrick and Gurley have paid taxes on the land belonging to the Hanrick estate, as set fort- on pages 21 & 22 of above exhibit, amounting to $13,904.18, said amounts not paid at the request of other part owners or by agreement with them.

It is agreed that defendant Hanrick has paid costs and expenses in suit against strangers to the Hanrick title, as stated on page- 22 & 23 of said exhibit, amounting to $4,881.89, not paid by request of other part owners or by agreement with them.

It is agreed as follows, viz:

1. The field-notes of Pedro Zarza 5 leagues are correctly set forth on page- 14 & 15 of exhibits filed Jan. 2, 1888.

2. Field-notes marked A on page 15 correctly describe a tract of 640 acres sold by Edward Hanrick, deceased, to James M. Wright.

3. Field-notes marked "C," page- 15 & 16, correctly describe a
tract of 320 acres recovered by Henry Duty by judgement of
344 dis. court Falls county enforceing an alleged contract between
him and said Edward Hanrick, deceased.

4. Field-notes on page- 17 & 18 & plat on page 19 correctly shows that part of the Zarza tract last in litigation with F. Ruble as well as that part recovered from said Ruble.

5. As to tracts described in field-notes beginning on page 27, said exhibits numbered as follows, viz:

1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, the same were sold by E. G. Hanrick to the grantees named therein and let into possession by him and conveyed by him to them respectively by deeds, with general warranty, prior to the institution of this suit, Hanrick then claiming to be and they supposing him to be sole legal heir. Where it appears that deeds were made since the institution of said suit it is agreed that same were made in consummation of sales made previous to date of suit and that said tracts were each occupird and claimed by said persons from a time prior to Dec. 17, 1878, and are still so occupied. It is agreed that the field-notes of R. D. Aguirsie grant are correctly set out in exhibit attached to def't E. G. Hanrick's answer and filed herein Jan. 2, 1888, on pages 13 & 14 of said exhibit.

It is agreed that Exhibit X, attached to said answer, contains field-notes of parcels of the Arguizie league, in Falls county, sold & released by E. G. Hanrick to persons named in said exhibit and is a full list of all sales made by him and of said league, except the tracts embraced in the deed from William Brady to Goodrich & Clarkson.

It is also agreed that exhibit attached to answer of William
Brady *et als.* contains a list of sales, contracts for sales, and deeds
made by William Brady on the La Serda grant and Arguizie and
Pedro Zarza grant-, in Falls county, and field-notes of said
345 tracts or contracts sold or conveyed, exclusive of the tracts out
of the Arguizie league embraced in the deed of William
Brady to Goodrich & Clarkson.

It is also agreed that the original filed papers and depositions in the records of this case and in the case of Nicholas Hanrick *vs.* J.V. Eubank at Marlin may be used in evidence, subject to legal objections as to their rel*a*vancy.

GOODRICH & CLARKSON,
Att'ys for E. G. Hanrick, E. J. Gurley.
H. F. RING,
Att'ys for Complaintants.
J. T. BRADY,
Att'y for W. Brady, W. A. Patrick, Adm'r, and Philip O'Brien.

Field-notes of the Parts of the Arguire League to be Excluded from Partition.

1. A tract of 109¾ acres surveyed for L. C. Martin: Beginning at the N. W. corner *corner* of the Agurie league for the N. W. corner of this, thence S. 28 E. with the west line of the Agurzie league, at 373 vrs. bed of Moore branch, at 400 vs. a stake for corner; thence 453 and ⅘ vs., cor. in the forks of Moore and Bowman branches.

Thence S. 33 and ½ E., at 28 vs. bed branch, at 190 vs. cor. on an elm marked X; thence N. 71 and ½, at 190 vs. bed Moore branch, at 669 vs. a st-ke for the S. E. cor. this tract; thence N. 28 W. 703 vs. to a stake in N. line of the Agurie; thence S. 62 W. with said line 1,135 vs. to the place of beginning.

2nd. A tract of 39½ acres surveyed for J. H. Livingstone: Begin-ing at the S. W. cor. of a survey of 109 and ¾ acres made for L. C. Martin in the west line of the Aguzie line, thence N. 623 453 and

$\frac{1}{2}$ vs. to cor.; thence S. 33 and $\frac{1}{2}$ E. 532 vs. to a st-ke for cor.; thence S. 77 W. 337 and $\frac{1}{2}$ vs. to a st-ke for cor.; thence S. 64 and $\frac{1}{2}$ W. 176 and $\frac{3}{5}$ vs. to a st-ke in west line of the Agiurie league; thence N. 28 W. with said line *a* 300 vs., bed of branch, and at 437 vs. to
346 the place of begin-ing.

3rd. A tract of 61 acres surveyed for C. W. Williamson: Beginning at the S. W. cor. of a survey of 39 and $\frac{1}{2}$ acres surveyed for J. H. Livingstone in the W. line of the Aguririe league, thence S. 28 E. with said line 643 and $\frac{1}{2}$ vs. to B. M. Lockhard's N. W. cr.; thence N. 70 E. 498 vs. to Lockhard's N. E. cor.; thence S. 28 E. 68 vs. to a st-ke for cor.; thence N. 62 E. 70 vs. to the bed of Moore's branch, with its m-anderings to Kirkpatrick's N. W. cor.; thence N. 28 W. 65 vs. to a stake; the-ce N. 83 and $\frac{1}{8}$ W. 255 vs. to Livingstone's S. E. cor.; thence S. 77 W. 337 and $\frac{1}{2}$ vs. to cor.; thence S. 64 and $\frac{1}{2}$ W. 176 and $\frac{3}{5}$ vs. to the place of beginning.

4th. A tract of 86 and $\frac{1}{2}$ acres surveyed for B. M. Lockard: Beginning at the S. W. cor. of a survey of 61 acres made for C. W. Williamson in the W. line of the Agiurie league, thence S. 28 E. with said line, at 60 vs. bed of branch, at 1,020 vs. S. W. cor. of Agiurie league; thence N. 62 E. with the S. line of the Argiurie league 492 vs. to J. R. Burke's S. W. —; thence N. 28 W. with Burke's W. line to — (704 vs. to Kirkpatrick's S. W. cor. brs. N. 62 E. 200 vs.), 954 vs. to a stake for cor.; thence S. 70 W. 498 vs. to the place of beginning.

5th. A tract of 82 and $\frac{1}{2}$ acres surveyed for J. R. Burke: Beginning at the S. W. cor. of a survey of 106 acres made for J. R. Kirkpatrick in the bed of Moore's branch, thence N. 62 E. with Kirkpatrick's S. line 427 vs. to a stake for the N. E. cor. of this tract; thence S. 28 E. 704 vs. to a cor. in the S. line of the Agiurie league; thence S. 62 W. with said line 627 vs. to B. M. Lockard's S. E. cor.; thence N. 28 W. with Lockard's E. line 886 vs., cor. with the S. W. cor. of Williamson tract; thence N. 62 E. 70 vs. to Williamson S. E. cor. in the bed of Moore's branch; thence down said branch with its meanderings to the place of beginning.

347 6th. A tract of 68 acres surveyed for Mike Williams: Beginning at J. H. Livingstone's S. E. cor., thence N. 33$\frac{1}{2}$ W. with Livingstone's E. line 342 — to a cor. on a small elm marked X; thence N. 71$\frac{1}{2}$ E. 894 vs.; thence S. 14$\frac{1}{2}$ E. 393 vs. to a stake; thence S. 60$\frac{1}{4}$ W. 457 vs. to a stake; thence N. 82 W. 358 vs. to the place of beg.

7th. A tract of 39 and $\frac{6}{10}$ acres surveyed for B. W. Smith: Beginning at the N. E. cor. of a survey made for L. C. Martin; thence S. 28 E. with Martin's E. line 703 vs. to his S. E cor. in the N. line of the Mike Williams tract; thence N. 71 and $\frac{1}{2}$ E. 222 vs. to a stake; thence N. 14$\frac{1}{2}$ W. to a stake in the S. line of the Zarza, S. 62 W. with said line to the place of beg.

8th. A tract of 76 acres for Nelse Chapman: B*ig*. at the N. E: cor. of a tract made for B. W. Smith, thence N. 62 E. 313 vs., W. Y. Miles' N. W. cor.; thence S. 20 E. 1,160 vs., Miles' S. W. cor. in De Graffinried N. line, elm marked Y brs. N. 9$\frac{1}{2}$ E. 23$\frac{4}{5}$ vs.; thence S. 64$\frac{1}{2}$ W. 196 vs. to De Graffinried N. W. cor.; thence S. 52$\frac{1}{2}$ W. 23$\frac{3}{4}$ vs. to the

S. W. cor. of the Mike Williams tract; thence N. 14 and ½ W. 393 vs. to N. E. cor. of Williams' tract; thence S. 71 and ½ W 3 vs., S. E. cor. B. W. Smith's tract; thence N. 14 and ½ W. with Smith's E. line 827 vs. to the place of beginning.

10th. A tract of 163 and $\frac{3}{10}$ acres surveyed for W. T. Wiggins: Beginning at the S. E. cor. of a survey made for J. R. Burke, thence N. 28 W. 710 vs. to Burke's N. E. cor.; thence N. 62 E. 1,383 vs. to a stake, *for* which a double elm marked V brs. N. 28½ E. 24 and $\frac{1}{10}$ vs., and an elm marked W brs. S. 28½ E. 15 vs.; thence S. 22½ E. 709 vs. to a st-ke in the S. line of the Aguirie league; thence S. 62 W. with said line to place of beginning.

11th. A tract of 198 acres surveyed for A. J. Garrett: Beg. at the
S. E. cor. of W. T. Miles' tract of the N. line of the De Grafferied
348 tract, thence N. 63½ E. 19$\frac{3}{10}$ vs. to the N. E. — of same; thence
S. 22½ E. 770 vs., cor.; thence N. 75 E. 680 vs., cor.; thence S. 79 E. 193½ vs. to cor.; thence N. 2 W. 184 vs. to cor.; thence N. 19¾ W. 439 vs., cor. in bed of Minter's branch; thence N. 33½ W. 358 vs., cor. on mesquite in bed of Minter's branch; thence N. 64 W. 140 vs., cor.; thence N. 24¼ W. 244⅗ vs., cor.; thence N. 16½ E. 188⅖ vs., cor.; thence S. 61 W. with the S. line of the Mit. Jackson tract 934 vs. to cor. in bed of Long branch; thence S. 28 E. 395 vs. to the place of beginning.

12th. A tract of 96.4 acres surveyed for R. F. Woodey: Beginning at the N. W. cor. of a survey made for Dr. Featherstone in the bed of a branch, thence S. 5 E. 430 vs. to the S. W. cor. of Dr. Featherstone's tract; thence S. 36½ W. 61⅕ vs., mesquite brs. N. 7½ vs.; thence S. 26 W. 880 vs. to corner in one of A. J. Garrett's line-; thence N. 33½ W. 80 vs. to one of Garrett's corners on a mesquite in the bed of Minter's branch; thence N. 64 W. 140 vrs., cor.; thence N. 24⅛ W. *to* 44¾ vrs.; thence N. 16½ E. 188⅖ vs. to A. J .Garrett's N. E. cor.; thence N. 61 E. 10 vs. to corner in bed of branch; thence N. 16¼ W. 597 vs. to corner on Marlin & Moorsville road; thence N. 69½ E. 244½ vs. to cor. at head of small branch in road; thence down said road to beginning.

13th. A tract of 117 acres surveyed for H. Winson: Beginning at N. W. corner of a survey made for J. F. Hackett, a post oak brs. S. 4 E. 74 vs., thence N. 74 W. 237 vs. to cor.; thence S. 62 W. 380 vs. to cor. in bed of branch, an elm 12 ins. in dia., marked X, brs. N. 13¾ W. 9 vs.; thence S. 28 E. 223 vs. to stake in S. line of Aguiriu league; thence N. 62 E. with said line 730 vs. to Hackett's
S. W. cor.; thence N. 4 W. with his east line 840 vs. to begin-
349 ning. *line to beg.*

14th. A tract of 172 acres surveyed for Mrs. Mit. Jackson: Beg. at Talley'- cor. in east line of this Jackson 640-acre tract, thence S. with Talley's E. line 1,764 vs. to his S. E. cor. in bed of Long branch; thence N. 82½ W. 69 vs. to W.T. Miles' cor. in said branch; thence S. 28 E. with Miles' E. line 250 vs. to A. J. Garrett's N. W. corner in bed of Long branch; thence N. 61 E. with Garrett's line 944 vs. to cor. in bed of branch; thence N. 16¼ W. with Wooley's W. line, at 597 vs. *past* his N. W. cor., at 648⅗ vs. cor. in the S. line of the Jackson 640 tract; thence S. 62 W. with said line 149 vs. to the

S. W. cor. of the Jackson 640; thence N. 28 W. with his W. line of same to beg.

15th. A tract of 102½ acres surveyed for G. W. Roaddy: Beg. at R. J. Akin's N. W. cor., thence S. 28 E. 307½ vs. to W. A. Roaddy's N. E. cor.; thence S. 62 W. 700 vrs. to W. E. Roddy's N. W. cor.; thence N. 28 W. 827 vs. to stake in the N. line of Aguririe league; thence N. 62 E. with said line to J. W. Cantrell's N. W. cor.; thence S. 18 E. with Coutell's W. line 520 vs. to beg.

16th. A tract of 109.6 acres surveyed for R. G. Vasser: Beginning at the S. E. cor. of Akin's tract in Gaither's N. E. line 146½ vs. for Gaither's N. E. cor., thence N. 28 W. 626 vs. to cor. in Akin's line; thence N. 73½ E. 5 vs. to his S. E. cor.; thence N. 28 W. 400 vs. to a stake; thence N. 62 E. 563 vs. to cor. in E. line of the Aguirie league; thence S. 28 E. with said line 1,218 vs. to Sam. Smith's N. E. cor.; thence S. 80 W. with Smith's line 454 vs. to his N. W. cor.; thence S. 82¾ W. 146½ vs. to beginning.

The above 16 tracts, parts, and parcels of the R. D. Aguirie league, in Falls county, being same tracts embraced in a deed made by William Brady to L. W. Goodrich & B. B. Clarkson for the consideration of nine dollars per acre, being full amount paid for 350 the alien interests, having been conveyed by all parties to this suit, it is agreed that the same shall be dropped from this suit and excluded from partition.

GOODRICH & CLARKSON,
Att'ys for E. G. Hanrick and E. J. Gurley.
H. F. RING,
Att'y for Complainants.
J. T. BRADY,
Att'y for Wm. Brady, Philip O'Brien, and W. A. Patrick.

The foregoing is endorsed as follows, to wit: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* In U. S. circuit court, at Waco. Agreement as to evidence. Filed Dec. 11, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

351 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.* } No. 52. In Equity.

Pending in the United States circuit court for the northern district of Texas, at Waco.

Before me, J. F. Knox, a notary public in and for Falls county, Texas, and selected by agreement of the parties as special commissioner to take testimony of witnesses in the above cause, personally appeared E. J. Gurley, there being also present H. F. Ring, Esq., counsel for complainants; also L. W. Goodrich, Esq., counsel for defendant E. G. Hanrick; and the said E. J. GURLEY, being by me duly sworn, made answers to oral questions propounded to him as follows:

I became acquainted with Edward Hanrick, dec'd, in 1858, at Washington city. I was then a practicing lawyer, residing at

Waco, Texas. He employed me in the fall of that year to attend generally to his business in Texas in connection with Mr. Hale. I met him frequently in Texas and traveled around with him. He was with me on his lands in Falls county and placed me in possession of the same.

Question. Was Edward Hanrick, deceased, ever present with you at or near where you subsequently made your improvements to which you refer in your answer and what was said and done between you there?

To this question the complainants' counsel objects because witness is incompetent to testify in this suit as to any statements made by Edward Hanrick, deceased, or transactions had with him.

Answer. I was with said Edward Hanrick, dec'd, frequently on my premises from 1858 to the beginning of the war. 352 I began making improvements there before the last time he was there. This was about 1861 or 1862. There were at that time 20 or 30 acres in cultivation. I had made the improvements under his authority and for my benefit. He had promised to make my wife a deed to 1,000 acres on the river, and it was under this promise that I began the improvement. I continued to improve from that time to this date, until I have now 1,000 or 1,200 acres in cultivation. I have been increasing the improvements every year. At this time I have about 1,000 acres in cultivation on the Brazos river, originally heavy timber, to clear which and to put the same in cultivation cost me $10,000. I have 22 tenant-houses, which cost me $100 each; one (1) gin-house, with steam engine; two (2) gin stands, one press, and grist mill, worth in all $3,000; two (2) dwelling-houses, one (1) with (4) four rooms and the other with seven (7), valued at $2,500 for both; I have about five (5) miles of fencing, cedar rails and barbed-wire fence and with cedar posts, valued at $500; 5 or 6 wells, valued at $300; one dwelling at the ranch, worth $2,500; fifty acres in cultivation at ranch, worth 10 dollars per acre; 3 tanks, worth $300, and one (1) tenant-house, worth $300, all outside of the dwelling being valued at $2,500; 60 or 70 acres in pasture, one mile of fence enclosing pasture, and one mile enclosing field, worth $100 per mile. There are (2) two other improvements, one of ten acres and the other about 25 acres, with a house on each, worth $10 per acre for clearing and putting in cultivation; (1) mile of fencing enclosing the same, worth $100; 353 tenant-house on each place, worth $100; 3 wells, valued at $100, and 5 or 6 cribs, worth $200. The bulk of these improvements were made 10 or 12 years ago and prior thereto, and I have been in continuous possession since 1859. At the time I began these improvements I had no definite contract with Edward Hanrick, dec'd, relating to fee. I met him first, as before stated, casually in Washington city. He then told me that he was coming out to Texas in the fall and wanted to see me. He did come in the fall of 1858 to Waco. I at the time was attending court at Marlin and rec'd a note from him. I met him in Waco.

NOTE.—Whenver witness testifies to any transaction had with deceased or statements made by him it is understood that complainants' counsel object on the ground of witness being incompetent to testify.

Cross-examination as to Improvements.

These improvements are all on the Zarza, between the river and the Port Sullivan road; the 1,000-acre improvements bordering on the river are under one enclosure of 1,500 acres, part of which is not in cultivation; the 22 tenant-houses are inside the 1,500-acres enclosuer; 3 of these tenant-houses have been built in the last 4 years; the dwelling-house in the 1,500-acre enclosure is worth about $800; it was built about 4 or 5 years ago; the other dwelling-house referred to is outside of the 1,500-acre enclosure and is worth about 1,700 dollars; it was built about 14 years ago. I omitted to mention that this house is within an enclosure of about 60 acres, with about 1½ miles of fencing around it, worth $150, and 2 wells, worth $100; the gin referred to is inside of the 1,500-acre enclosure and was placed there about 5 years ago; it was moved there from the place near the $1,700.00 dwelling-house where it was first erected about 15 years ago; the ranch improvements referred to are 1½ miles west of the $1,700.00 dwelling-house.

354 The $2,500.00 house on the ranche was put up in about 1880; the tanks were put there in 1881 or 1882; the 60-acre pasture improvements testified to were put there about the time the house was built; the 50-acre field improvements was put there by me about 30 years ago, during Hanrick's lifetime; the improvements were made by a man I had placed there to hold possession for Hanrick, dec'd, and myself; he made improvements at his own expense in the consideration of the use of the land. I started the improvements on the 1,500-acre enclosure in this way: I leased a part of it to a man named Davis in 1859 or 1860 for 5 years in order to get it improved and to hold possession; at the end of the 5 years I had some 20 or 30 acres improved.

Recalled by defendants:

The 1,500-acre enclosure is substantially the same now as they were 12 or 14 years ago, except that the fencing has been curtailed some owing to the overflows 4 or 5 years ago.

In 1858, when I first commenced, the Hanrick titles were all disputed; he claimed to own the La Serda 11-league title, the Zarza five-league title, the Aguirrie one-league title, all in Falls county, and the Aguirrie 10 leagues in Williamson county, except parcels out of each tract that he sold. He had had litigation about the La Serda title. I took possession — 1858 of all his lands in Falls county; I placed tenants on the La Serda, on the Aguirrie and Zarza, and held possession myself on the Zarza; a man named Riddle, one named Jolly, and one named Pruitt on the La Serda attorned to me; this was between 1858 and 1860. Outside of these all other occupants refused to recognize the Hanrick title so far as the Cham-

bers title*d* was conserned. There were two suits in the
355 Federal court at Austin brought by Hanricks in his life-
time, tried in 1870, resulted in a verdict against Hanrick. I appealed to the U. S. Supreme Court and had it reversed. It was tried again in 1874 and Hanrick lost it again. I appealed it the second time. There were engaged in that trial besides myself W. M. Walton and R. A. Smith, for the pl't'ff, and Hancock and West, Gov. E. M. Pease, Judge Moore, W. B. Ford, and General Shelley were for the defendants. The trial lasted three or four days. The def't- presented on the last trial besides their title the statute of limitations and adverse possession: also they set up the nullity of the judgement obtained against the Chambers estate in the circuit court at Galveston. This case remained pending on the second appeal to the U. S. Supreme Court, and was finally dismissed after I had *af*fected a compromise with the Chambers estate. These suits referred to were pending when E. G. Hanrick came to Texas in 1866 or 1867. There was also suit pending in the same court involving the Zarza, brought by Edward Hanrick, dec'd, against Robert Moore and others, who held possession and claimed under adverse title, and various others, who were squatters. The river front of this grant was covered by head-right leagues. Ruble claimed one league, one-half of which conflicted with the Zarza; Pearson claimed the Wm. Spurgen league, also conflicting with the Zarza; a man named Watson claimed the Franks league, one-half of which conflicted with the Zarza. There were also pre-emption claims scattered about over the grant besides the suit above mentioned. I, as the att'y for Edward Hanrick, defended a suit brought by the heirs of J. G. W.
Pearson against Edward Hanrick in about 1860 in the dist.
356 court of Falls county. This suit was to recover the Spurgen
league, in conflict with the Zarza, which resulted in the defeat of the Pearson heirs in about 1867. This suit in regard to the Zarza was first tried in 1868, and on appeal to the Supreme Court of the United States was reversed in favor of Hanrick, pl't'ff in error. As to all the def'ts except Rubles, we made settlements with them during the progress of this suit, and finally settled with Rubles in about 1876. I think this was the last one settled. Since 1876 the right of the Hanrick estate to the Zarza title has not been disputed. We took possession of Aguirrie land, in Falls county, through a man named McKabe, in 1858. Edward Hanrick was with me. We made him a lease; we held possession ever since. We had been enabled to maintain possession, but made no sales, because we did not want to make warranty deeds until after possession of ten years, with full bar of limitations. We were in doubt as to the validity of the titles is why we did not make warranty deeds. We finally made a few sales in 1875. Jackson filed the Donahoe certificate in Falls county Aguirrie lands in 1874, and he also located other certificates covering several thousand acres of the Aguirrie in Williamson county. Witness, in connection with other counsel, brought suit against Jackson in the dist. court of Falls county. We tried the case, and we lost it, the court holding the title to be invalid. We appealed to the Supreme Court and it sustained our title and reversed the

judgement, and on the second trial we got judgement in favor of Handrick. The settlers on the Aguirrie land in Williamson county refused to yield and filed affidavits of forgery and continued the liti-
gation, and the settlers on the Aguirrie land in Falls county
357 threatened to pursue the same course, and I consequently
bought the Donahoe certificate in order to avoid further liti-
gation. After that I and E. G. Hanrick as pl't'ffs brought suit against them, and afterwards settled with most of them by releasing to them. There are three parties on the Aguirrie in Falls county, viz., A. B. Gather, S. B. Brewer, and J. R. Lane, who are still resi-ting our title, alleging forgery.

Examination in Relation to Att'ys' Fees.

My agreement with Mr. Hale was that I should pay him money for his services past and future and take his fee in the case in about 1868 or 1870, as he was about to remove to New Orleans, La. E. G. Hanrick, who was administrator and who claimed to be sole heir of Edward Hanrick, deceased, was present and agreed to it. The item of $3,500 for legal services paid W. G. Hale, appearing on page 24 of exhibit, was paid him in accordance with this agreement for his services rendered in the La Serda and Zarza matters—was paid him at different times from 1869 to the time of his death; my contract with him was to pay him $1,500 for his services in the Supreme Court in the Zarza litigation and five thousand dollars for his services in the La Serda litigation. The $3,500 was paid Mr. Hale prior to his death, which occurred in about 1876. He was to assist me in the trial of cases in courts below whenever he could; at all events he w-s to attend to all cases in the Supreme Court. There was no contract in writing between Hale and myself, but E. G. Hanrick was to make deed to me instead of Hale, and he did so. In regrad to the item of $2,500 paid to D. G. Smith, I gave him a deed to about 800 acres of land out of the Aguirrie in Williamson county. E. G. Hanrick made him a deed at my re-
quest. Smith accepted it. D. G. Smith had already a deed
358 to the same land from Wm. Brady; he also held under the
Beard patent. This was for services rendered by him in the Aguirrie litigation. In regard to the item of $1,000 paid F. Chandler, the same was paid by him for services rendered in the Zarza litigation and was paid prior to 1870. In regard to the item of 300 dollars paid Smith and Blackman, — was for services in the Chambers suit and was paid prior to 1870. In regard to the item of $25,000 to Goodrich and Clarkson, — was for general services rendered since 1870; services were rendered by them in the Chambers litigation, the Zarza litigation, and the Aguirrie litigation after the Jackson file. No money has been paid them; simply an agreement to pay them in land, to which no deed has been made. The land is out of the La Serda and consists of 1,500 acres, and under this agreement Goodrich and Clarkson are in possession. In regard to the item of $45,000 to W. M. Walton, there were $7,000 paid cash; the rest has been paid in lands in this wise out of the Aguir-

rie in Williamson county: Hanrick at my request made him a deed to 3,500 acres in Williamson cou-ty; I joined in the deed; Walton also got a quitclaim deed from Wm. Brady to the same land, for which, I am informed and believe, he received no consideration, and he also has title under the Jackson location. In regard to the item of 800 dollars to Conway Robinson, this was paid in cash in 1873.

Testimony as to Possession.

I held possession for Hanrick and myself, each recognizing the other. Since the death of Edward Hanrick E. G. Hanrick and I have continued to hold possession adverse to all others except as to those to whom we sold. My possession has been actual and continuous since 1858 under a claim of an interest and my improvements I
359 made for myself. When Edward Hanrick first employed me he told me that he would give me an interest in the land, and put me in possession. My possession has been continuous and adverse ever since as to all parties except Hanrick. Until the issuance of the writ of possession in the case of Eliza O'Brien *et al. vs.* E. G. Hanrick, No. 14, on the docket of the United States circuit court at Waco, E. G. Hanrick and myself have been in possession of the land, holding it adversely to complainants and parties claiming under Eliza O'Brien, of Ireland. Until the issuance of said writ we denied the title of the alien heirs and their right to take possession; there was no demand from them for possession, nor any effort by them to get possession until suit was brought. Pending the suit we have held possession as alleged in complainants' bill, with the exception of some small tracts which complainants have taken possession of during the pendancy of this suit.

E. J. GURLEY.

Sworn to and subscribed before me this third day of Aug., A. D. 1888.

J. F. KNOX,
Notary Public, Falls County, Texas,
and Special Commissioner, Falls County, Texas.

The examination of this witness, by consent of parties, adjourned to the 17th day of Aug. next, 1888. Mr. Ring adjourned over to Nov. 9th, 1888, at which time we met, the same parties being present as before, and the witness, E. J. Gurley, proceeded as follows: Witness presented his deed from E. G. Hanrick and the contract referred to in said deed, copies of which are hereto attached, marked Exhibit- A and B, showing date of record, etc. None of the lands in controversy have ever been rendered for taxes in my name, but in the name of E. G. Hanrick. I never
360 joined in the execution of any deeds to any of the lands in controversy with E. G. Hanrick until about two years after the institution of this suit. Prior to that time I often sold tracts of that land in controvercy, as the agent of E. G. Hanrick, under a power of att'y from him, the deeds being made in Hanrick's name.

The letter mentioned in my answer to pl't'ffs' bill written to Belcher and Ring, was written about Feb., 1879. Since the institution of the suit I have continued to act as agent for Hanrick and for myself in reference to the lands in controvercy in 1876. I had about 400 acres of land in cultivation in my enclosure in the Zarza. I continued to improve and add to my farm more land every year until four years ago. when I had about 800 or 1,000 acres. I have at the present time between 800 and 900 acres improved and in cultivation. During the period this improved land has rented for about $3.50 per acre annually as an average to the present time. During the period above referred to E. G. Hanrick has had in cultivation on his place about 500 acres of land, according to my best impression, as I have not been over the place in five or six years, the rental value of which is about the same. During the period above mentioned the Brazos river has overflown four times, and has diminished the rents at least one-third each year of the overflow. The overflows do not relate to the Hanrick farm, which is on the prairie above overflow. The contracts I made were with negroes when ability to pay depended upon their making crops, and when they failed I collected nothing. I was also obliged to advance them provisions and supplies to enable them to make crops, and in 1884, 1885, and 1886 I was able to collect about half rents besides advances made to them; in 1887 the drouth was so severe that no crops were made, and besides not collecting any
361 rents I lost over $800 for advances made to the tenants. Attention to the business has taken a great deal of my time, and I have also had expense of employing a superintend*a*nt at $500 *dollars* per year. These losses and expenses and the expense of keeping the place in repair leave very little margin for net rents and profits. As before stated, all the improvements were made by me; the rents have not paid for the improvements; the value of the land without improvements would be $10 per acre; the value of the use of the land without the improvements would be nothing. The improvements at the Hanrick farm were all erected by him.

Question. What is the value of you- place with the improvements per acre on the river—that is, the 900 acres of land in cultivation, including the improvements on the same necessary for *the* its cultivation, such as the fencing, tenant-houses, and gin?

Answer. About $30.00 per acre.

Question. What is the annual rent of the above 900 acres with the improvements, and what percentage upon that investment could reasonably be expected to be realized under good business management exclusive of the cost of superintendence?

Answer. Nomi*an*lly it is worth $3.50 per acre, but real-y $2.00 per acre is as much as a man could reasonably expect to realize; and I can say in regard to the rental value of the unenclosed land is, that I have been offered $300 per year for five years' lease of about 4,000 acres; this was about 3 years ago; this was on the Zarza grant. The fencing material, such as the posts and rails around Hanrick's and my enclosures, were made from cedar grown on the Zarza land.

362 During the period from 1865 to 1874 different persons settled upon the Aguirrie leagues in Falls county with my consent and under an agreement with me that when the title was settled Hanrick and myself would convey to them. We were unwilling at that time to make warranty deeds; they among them occupied the entire grant. While matters were in that condition one Jackson located the Donahoe certificate for one league covering the grant; and we made deeds only to Dr. E. H. Featherstone and E. J. Featherstone and Widow Featherstone; this was in 1875, and these places are still occupied under these deeds; the other settlers were not pressed to close their trades until after the termination of the litigation with Jackson before mentioned; when I finally pressed them for a settlement they refused, and then Hanrick and I bought the Donahoe certificate and brought suit against said settlers in the dist. court of Falls county, and pending these suits patent was issued to E. G. Hanrick as assignee. None of these suits ever came to trial except one against A. B. Gaither. In the case against Gaither we recovered judgement in the dist. court, and on appeal the judgement was reversed. During the years of 1885 and 1886 we settled with all the def'ts in said suits except the following, viz: A. B. Gaither, S. B. Brewer, John Lane, and Mrs. Lane and her sons (McFaden boys), Miner Copeland, a man by the name of Bryant, Dave Hyden, Mrs. Ada de Graffenried; all these persons are contesting our rights; with the others we compromised; made them quitclaim deeds and dismissed the suits against them. Gaither, Brewer, and Lane are claiming under pre-emption surveys made for them and alleging forgery of the Aguirrie title, and claiming limitation; a copy of the patent to E. G. Hanrick, as assignee, is attached to these depositions and marked Exhibit "B."

363 We paid for the certificate Feb'y 25th, 1884, $1,000.00. The Government dues amounted to $24.25 and the patent fee of $5.00; paid county surveyor for correcting survey $35.00.

None of the alien heirs or parties claiming under them were ever requested to contribute any portion of this expense, nor have any of them ever offered to do so, nor were they ever notified of our intention to purchase the certificate. The compromise mentioned above embraced about 2,200 acres of the league for which we received vendor-lien notes, at the rate of $7.50 per acre, for our quitclaim deeds, in which we sold all our interest in the land.

As to the Aguirrie 10 leagues in Williamson county, since my first connection with the Hanrick business, in 1858, down to the present time there has been constant contest and trouble about the title, made by squatters, locators, and pre-emptors settled on the land. After the war, the old leaders having died off and moved away, I negotiated with new men who had succeeded them and made some small sales to some of them in 1871 and 1872 and put one James in possession as tenant. At that time there was no opposition to this course. After the file by Jackson, in 1874, the settlers all at once became hostile to the Hanrick title and made pre-emption surveys and locations covering the remainder of the ten leagues. The parties refused to acquiesce in the decision in the Jackson case

and we brought suit against them. We have tried one case against Cavanaugh and one against Dodd, which resulted in final judgements against us. The other suits are still pending. The def-ts in those suits allege that the Aguirrie title is a forgery, and the cases above mentioned were determined upon that issue, the jury having found upon the evidence in those cases that said title was
364 forged, and the supreme court sustained the verdict. Since the determination of these cases against Cavanaugh and Dodd plaintiffs has taken further testimony on the issue of forgery, to wit, the testimony of Moses Austin Bryan, Guy M. Bryan, and R. O. W. McManas, and we have caused the suits to be removed by change of venue to Travis county. About one-third of these def'ts are holding under locations made before the war and about two-thirds of them are holding under locations and pre-emptions made about 1874. All of these to whom Wm. Brady conveyed title held under recent locations, except D. G. Smith, who has deed from Brady and us. None of these parties who purchased from Brady claim to be able to establish limitation against us, but rely upon their plea of forgery. Nearly all of the other defendants rely upon maintaining title by limitation as well as their plea of forgery. The suit brought in Falls county against Jackson and the suits, above referred to, brought in Williamson county, embraced the entire Aguirrie ten-leagues grant, except the McFaden league conflict and the Beard 640-acre conflict and another small survey of 200 or 300 acres on the western boundary. Suits are still pending for the recovery of all the land except where persons had deeds from the alien heirs and us—*i. e.*, from both parties. E. G. Hanrick has sold lands in Williamson county, as described in exhibit hereto attached and marked "C," none of which is included in conveyance from Wm. Brady, according to my information. Hanrick sold at $3 per acre. Hanrick has conveyed 5,000 acres to A. J. Fisher and 800 acres to D. G. Smith, and Wm. Brady has conveyed the same lands to these same parties. The conveyance from Hanrick to Fisher included 3,000 acres for which he paid $5,000.00 and 2,000 acres to Haley for $1,000. The sale was made about 15 years ago. Among those to whom Wm. Brady sold was Wm. Keilhor, who
365 bought about 8,000 acres. Keilohr offered me 1,000 acres for the Hanrick title. When the offer was made I think the 1,000 acres referred to was worth $10.00 per acre, averaging with his entire tract. This offer was made after Brady sold to Keilhor.

Question. In regard to tracts of land sold by Wm. Brady in Falls county, especially in the Zarza tract since the issuance of the writ of possession, do you admit the right of such purchaser under him to the possession and undisturbed enjoyment as cotenants with E. G. Hanrick and yourself of the tracts of land so purchased?

Objected to by counsel for the defendant Hanrick. 1st. I object that such conveyances are void as to E. G. Hanrick and do not create any new tenancy in common.

Answer. I admit their right to joint possession except as to lands which had already been appropriated and improved by us with this qualification—that they have no rights to sell or appropriate timber except for the improvement of the land, and their rights and possession are entirely subject to a fair partition of the land.

Question. Do you or do you not admit that such purchasers have the same right to sell and dispose of timber on the tracts thus purchased which you or def't Hanrick had on any portion of the unsold land in the Zarza?

Answer. I don't think either party would have the right to sell timber from the lands during the pendency of the litigation. This is not intended to prevent them from cutting timber for the purpose of improvements upon the lands.

E. J. GURLEY.

366 Sworn to and subscribed before me this 10th day of November, 1888.

J. F. KNOX,
Notary Public, Falls County, Texas,
and Special Commissioner.

Also appeared before me, J. F. Knox, notary public, Falls county, Texas, and special commissioner, as aforesaid, on this 10th day of November, 1888, J. W. GAMESON, a resident of Falls county, Texas, who, being by me duly sworn as a witness, makes answers as follows to oral questions propounded to him as follows:

I am living about 8 miles from Marlin, just about 200 yards north of the north line of the La Serda grant, and have been living there about 14 years. I have been acting as agent for the alien heirs under their att'y, H. F. Ring, since about the year 1881. I have been all over that portion of the La Serda grant not embraced in the Chambers and Cavitt conflicts a great many times. I have in my work as agent visited every improvement on the land referred to; there may be some little improvement which has escaped my notice, but I don't think there is. I have also assisted Mr. Pearson in making a survey of the land and I am pretty familiar with all the lines that have been run on it. I am familiar with the quality of the land and its natural advantages. The rental value of the improved land ranges from $2.50 to $3.50 per acre per annum. this has been the average rental value from 1876 to the present time. I know the H. Gibson improvements referred to in Exhibit "Y" in defendant Hanrick's answer. The improvements were there in 1876—there are between 20 and 30 acres improved. The Hale improvements have been there since 1876. The same number of acres have been in cultivation in the Hale place since 1876. The Reed 25-acre improvements have been in cultivation since 1876.

367 On the Hamp Green imp*or*vement there has been between 15 and 18 acres since 1876; on the T. J. Parton improvements there have been about 25 acres in cultivation since 1876; on the Wm. Banks improvements there have been about 25 acres in cultivation since 1876; on the S. L. Parsons place there have been 25 acres in cultivation since 1877; on the Wm. Manes place there

have been 20 acres in cultivation since 1882; on the Jack Owens place there have been on an average 20 acres in cultivation since 1876; on the George Green place there have been about 20 acres in cultivation since 1876; on the G. W. Pate place there have been about 20 acres in cultivation since 1876; on the John Burgers place there have been in cultivation since 1876 about 25 acres on an average; on the Dave Pearsons place there have been about 30 acres in cultivation since 1879; on the John Parsons place there have been about 35 acres in cultivation since 1876. The Steve Bryan—otherwise the S. B. Bryan—place was sold to him in 1881 by the alien heirs and has been held by him ever since under contract. On the Wm. Kimbro place there have been about 30 acres in cultivation from 1876 to 1887; on the James Meyers place —; on the Johnson and Worthy place there have been about 65 acres in cultivation since 1880; on the H. J. McCorkle place there have been about 30 acres in cultivation since 1881.

The improvements above mentioned are those referred to in Exhibit Y of defendant's answer, and the annual rental value of these improved lands during the periods respectively mentioned above would be *on* about $3.00 per acre.

368 To all of this testimony counsel for defendant Hanrick objects as being immaterial because the records show that all these improvements were made by the def't Hanrick since the death of Edward Hanrick, deceased, and no interest in said improvements descended to or vested in the pl't'ff-; the records show also that a much larger part of the land is unoccupied.

I base my opinion as to the value of rents in these tracts of land on my knowledge of what has been paid for rent on lands of similar quality in the same neighborhood within the last few years. I do not think there was a great demand for the land for rent 8 or 10 years ago or for the last 5 years. For the last 4 years the rent of the land referred to is reasonably worth $3.00 per acre. From my knowledge of the rental value of lands over the county generally during the period from 1876 to 1883 I am of the positive opinion that the rental value of the tracts of land above testified to was during said period about $2.00 per acre.

In the section of country where these improvements are I have known of no persons renting lands in the section referred to who were able to pay unless they made a crop, and the only security the landlord had for his rent is the crop. The years of 1886 and 1887 the crops were failures almost entirely; as to previous years I cannot say.

There is no land in the unsold portion of the Laserda tract which is not suitable for pasturage, although there is some more and some less valuable.

Question. In the year 1887 what was the rental value of that land unimproved and unfenced for pasturage purposes? I refer to the unsold land in the La Serda.

39 Answer. I should say, from my knowledge of prices paid for pasturing and from my knowledge of the cost of fencing,

that it was worth from 10 to 25 cents per acre annually. I arrived at the conclusion from my knowledge from these facts- there has been paid in that neighborhood for pasturage 25 and 35 cts. per month for cattle and 50 cts. for horses; this was in 1887. In 1886 there was paid 70 cts. per month. When they began first to enclose pastures in that neighborhood, which was about 1881, they got about $1.00 per head per month. Since that time the price has been gradually falling. Since the land has begun to be closed in pastures, along about 1882, there has been a good deal of demand for the privilege of putting cattle in pastures. There has been some call upon me since 1885 for leases for unfenced land. I think I could have leased it, all of the unsold La Serda, if I had had the authority. (To all of this testimony as to the value of unfenced land counsel for the defendant Hanrick objects and says the same is immaterial.)

The general custom is to put stock in pastures from 1st Nov. to 1st March. Some extra stock would be left somewheres in the pasture the whole year.

It is not hardly possible in that section to lease unfenced land for pasturage unless it is for a term of one year or more. The grass is free to all until it is fenced. I don't think it probable that the unfenced land could be rented without the privilege of fencing, and I don't think it probable that it could be so rented without a lease for at least 3 years. The land purchased by La Prelle from Wm. Brady is all fenced.

Messrs. Goodrich and Clarkson have about 1,500 acres under fence on the La Serda where they live and including their homes, which they hold under E. G. Hanrick. It is sometimes customary to lease small tracts of land like that on the La Serda 370 for a term of years, usually 5 years, the use of the land to be paid for by stipulated improvements to be put upon it, such as the reducing of a certain number of acres to cultivation, building fences, houses, cribs, etc. I know of instances of this kind being done. I don't know of any lease of this sort on the Laserda since about 1874. I think that most of the improvements about which I have testified were begun and partly completed by squatters a good many years ago. Since I became agent for the alien heirs I have had several applications to lease lands on the Laserda on terms similar to these above indicated. I knew Mr. Ring, acting for the alien heirs, about 1881, having made contracts for the sale of tracts of land to Ike Corey, Wilson Hammen, and S. B. Bryan. By the terms of these contracts they were to pay for these lands after the partition or upon final adjudgement of the litigation, provided substantially these tracts of land should fall to the portions allotted to the alien heirs. At the time these contracts were made these parties were in possession and had possession of improved places on the Laserda. Soon after these contracts were made suits were brought by E. G. Hanrick for the recovery of these tracts of lands and judgement was rendered in his favor, from which appeals were taken to the Supreme Court and judgements were reversed, and these suits, as I am informed and believe, are still pending. I know of two other sales of the same character being made, one to D. A. Barton, deceased, and one to John McNeely. These sales were made about the same time, in about 1881. I am informed and believe suits were filed soon after against D. A. Barton for the recovery of the land contracted for by him, and this suit is still pending. The Casey 371 contract was for about 100 acres, about ½ of which was in cultivation; this tract is now in possession of F. F. Green, who holds under E. G. Hanrick; the Hammers contract covered 100 acres, 60 or 70 acres of which were in cultivation; the Bryan contract embraced 150 acres, about ½ of which was in cultivation; the D. A. Barton contract embraced about 65 acres, about 20 acres of which were in cultivation. Barton at that time was in possession under a purchase from Mrs. Emily Davis, who claimed title by limitation to 640 acres, including this tract and the McNeely tract. The McNeely contract embraced 50 acres, a few acres of which were enclosed with a brush fence. Another verbal contract of the same character was made with a man by the name of Roberts for 50 acres. Roberts was in possession at the time. He remained on the land about one year or so after the contract was made and then abandoned it. This place is now in possession of T. D. Reed, who claims under E. G. Hanrick. Nothing was ever paid by Roberts on this contract. The foregoing embraces all the contracts that were made, to the best of my recollection, down to 1884 and 1885 by the alien heirs or parties claiming under them. I am quite sure no other contracts were made down to 1884 and 1885, and no attempt was made by said alien heirs or their assigns to get possession of any other tracts of land on the Laserda. In 1884 or 1885 contracts with W. M. McGahee, J. R. Cohn, J. J. Ellis and E. Parsley, and Wilson Hammers were made by the alien heirs or parties holding under them, for tracts of lands on the Laserda. The contract with McGahee embraced 70 acres, none of which was improved; it was vacant and unoccupied land. The contract with Cohn embraced 70 acres of land in the same condition. The contract with Ellis embraced about 110 acres in same condition. The contract with Parsley embraced 50 acres; the land was in the same condi- 372 tion. The contract with Wilson Hammers, Jr., embraced 16 acres in the same condition. When these contracts were made there was a lease from E. G. Hanrick, embracing any of these tracts of land. One dollar per acre was paid down to H. F. Ring, and the parties were to pay $4.00 per acre more after the litigation was ended and their titles perfected by the partition; the said parties were to pay 10% interest annually and were to take possession of their lands with the understanding that they were to cut no timber from the lands except what would be necessary for the improvement of their respective places. The parties went into possession of their land soon after the execution of the contracts. Soon after a suit for force*a*ble entry and detainer was brought by E. G. Hanrick against Cohn and McGahee, and judgement was rendered in favor of plaintiff; the case was appealed to the county court, and on trial there *de novo* judgement was also again rendered in favor of the plaintiff. After the rendition of these judgements Cohn and

McGahee continued to remain on their lands. I was advising counsel for Cohn in the matter, and he went to Capt. Goodrich, att'y for E. G. Hanrick, and made some arrangements about staying on the place. My understanding is that McGahee made similar arrangements with Capt. Goodrich. Hammers or his vendee is still in possession. Soon after the termination of these suits for forcible entry and detainer a tie contractor, with authority from Capt. Goodrich, went upon the Cohn, McGahee, Ellis, and Parsley tracts and cut most of what was left of the tie timber and cut about 4,000 ties, the most of which were cut from the above tracts contracted to Cohn, McGahee, Ellis, and Parsley; according to
373 the best of my information and belief nothing further has
been paid on these contracts. I know the money paid by Ellis has been refunded to him and a little more by Mr. Ring after the cutting of the tie timber. Nothing was ever paid back to Mr. Parsley, because he himself had sold enough timber to more than reimburse him. Up to the time of the issuance of the writ of possession in favor of Wm. Brady, E. G. Hanrick, through his att'ys, always claimed to be in the exclusive possession of the unsold land on the Laserda, and have always asserted that they would put parties off of the land by legal process who would attempt to take possession of these lands under the alien heirs. I have testified to all instances in which attempts have been made by alien heirs or parties claiming under them to take possession of any portion of the Laserda grant except one contract made with Capt. W. A. G. Nicholson, with which I had nothing to do.

I, as agent aforesaid of the alien heirs, have frequently been on and over the land, asserting their ownership and right, and I have never been disturbed or prevented, and I don't know of any other agent of the alien heirs having been disturbed or prevented from performing their duties on the Laserda.

J. W. GAMESON.

Sworn to and subscribed before me this 12th Nov., 1888.

J. F. KNOX,

[SEAL.] *Notary Public, Falls County, and Special Com'r.*

Edmund Pearson also appeared as a witness, and, after being duly sworn, deposed as follows:

I am a surveyor. In Dec. and Jan. of 1885 and 1886 I run out the lines of the La Serda grant at the request of Wm. Brady.
374 I have been county surveyor of Falls county for 8 years, and
have resided in the county since 1866. I have made an estimate of the unsold lands belonging to the Hanrick estate on the La Serda exclusive of the sales made by E. G. Hanrick and Gurley. It amounts to about —. This is a rough estimate, as near as I can conveniently make it. It is within — acres of the correct amount. I also ran out the lines on the Zarza grant at the instance of Wm. Brady in 1885. Exclusive of the sales made by E. G. Hanrick and Gurley the unsold portions of the Zarza grant to

about —. This is a rough estimate, as near as I can conveniently make. It is within — acres of the correct amount. I began making the surveys on the Zarza in August, 1885. My recollection is that I heard from some source that Col. Gurley would not permit any surveying to be done at that time on the Zarza. My recollection is that he objected to new tracts being surveyed off more than to the retracing of old lines. My instructions from Wm. Brady were to retrace the original lines, and my understanding was also to run additional lines, subdividing the unsold land into convenient tracts for sale, and also to run out lines on contracts made by Col. Brady for sale. Before I went to work an order authorizing me to make the survey was issued by the district court of Falls county, a copy of which is also attached to these depositions and marked Exhibit E. After I had been at work a few days on the grounds I received a letter from Col. Gurley. I have lost the letter. In this letter he threatened to prosecute me if I made any new lines on the survey. About the same time I received a further order from the district court of Falls county limiting me to the running
375 of the lines of the original grants and the surveys of the tracts of land sold by E. G. Hanrick. A copy of said order is hereto attached and marked Exhibit F. Mr. Eubanks, Col. Brady's agent, was with me most of the time while I was making the surveys. He was assisting me in finding the corners and making himself familiar with the lines. On one occasion while I was on the land, going from one part of the survey to the other, about one week or ten days after I had begun, R. J. Brooks and a man by the name of Rhea rode up to me. Brooks was armed with a double-barrel shotgun, and the following conversation, as well as I can recollect it, took place: Brooks introduced himself to me by name, and after some little conversation, enquiring if I was a surveyor and if I had an order of the court, etc., he enquired if Eubanks was along. I told him that he was not, and he replied that if he (Eubanks) had been along there would have been some shooting done. I told him that if he did any shooting around where I was I wanted him to aim pretty high. (Witness is 6½ feet high.) Brooks talked to me in a very friendly way and showed no animosity towards me or the chain-carriers and did not attempt to interfere with our duties. In making surveys on that land I did not violate the order of the court until after the issuance of the writ of possession. This man, R. J. Brooks, referred to, is a son-in-law of E. J. Gurley. The fair rental value of the unfenced land on the Zarza where I surveyed would be at that time, I should say, about 10 cents per acre. That is based upon the lease running from 3 to 5 years, with the privilege to the party leasing it to remove the posts and wire and improvements, and it would be worth about the same now.

376 Cross-examined:

I knew of land being leased for 3 year- upon the lessee paying the taxes and surrendering the improvements at the end of the lease. Up to about 1884 or 1885 there has been a good deal of open free range in Falls county. Up to about that time there was not much demand for lease of unfenced lands in Falls county. The lease of such land for one year or less would be of not much value. I understood from Col. Eubanks that he, as agent of Col. Brady, had contracted to sell a man by the name of Tibbs a tract of land embracing what is known as the Blocker ranche, Gurley claiming possession of it at that time, the improvements thereon consisting of a nice dwelling, sheep sheds, lots, etc., claimed by Gurley, and part of the work I was to do while there was to survey this tract for Tibbs, but before doing so we received the 2nd order of the court and we did not make the survey. When Brooks came to me, as stated above, I had not received the second order of the court. It is my impression that we had some conversation about it, but I don't definitely remember whether or not I told him about the order and of my intention not to run any new lines. I had not before that time surveyed off any tracts sold or contracted to be sold by Brady. While I was retracing some of the lines of the surveys sold by E. G. Hanrick, Mr. Eubank, as Brady's agent, contracted to sell to various parties adjoining tracts which we did not survey more than to make a corner in the lines already surveyed and made up the field-notes from data already known, and have, since the writ of possession in favor of Brady has issued, *have* run and marked the lines from those points.

EDMUND PIERSON.

377 Sworn to and subscribed before me this 13th day of Nov. 1888.

[SEAL.] J. F. KNOX,
Notary Public, Falls County, Texas, and Special Com'r.

Also appeared I. V. EUBANKS, a witness, who, being duly sworn deposes and says:

I live in about the center of the Zarza 4-league grant on a 100-acre tract of land sold by E. G. Hanrick in 1874 to G. W. Chumley, from whom I afterwards purchased it. I began to act as agent for Brady and the alien heirs in 1885 after the second decision of the supreme court in their favor. Up to that time the alien heirs and those claiming under them had made 3 contracts, one to J. Watson for 50 acres and one to J. O. Brewers for two tracts, one containing $17\frac{3}{5}$ acres and the other $32\frac{2}{5}$ acres—no money was ever paid on the contracts—and another contract with F. B. Brewer for 50 acres, for which no money was ever paid. My impression is that Brewer took possession and cultivated their lands before the rendition of the 2nd judgement of the State supreme court in favor of the alien heirs, and they have remained in possession ever since. Watson bought his land for fire-wood and has never fenced it. About 1885, according to the best of my impression, one Blackman was in possession of 100 acres under Keaney, who claimed under E. G. Hanrick, about 60 of which was in cultivation. About that time Blachman contracted for this land from the alien heirs and repudiated his tenancy under Keaney. Keaney brought suit for forcible entry

and detainer immediately after and recovered possession and
378 judgement for $300, which has not been satisfied according
to my belief, and Keaney is still now in possession. About the first contract I made after I took the agency was with Mr. H. E. Richey for 138 acres in July, 1885. A deed was made to him and signed by Brady, by which he was to pay for the land after the litigation was ended. Richey at that time was in possession of the land. Soon after this E. G. Hanrick instituted suit of forcible entry and detainer, and on the trial of which Richey exhibited a contract *which* Edward Hanrick, deceased, covering this land and connected himself with it. On presentation of this contract on the trial E. G. Hanrick abandoned the suit and paid the costs. Richey is still in possession of the land. Nothing has ever been paid on his contract with Brady, which he has repudiated, and he now claims title to the said land under the old contract with Edward Hanrick, deceased, which calls for 320 acres, which he claims *he* covers the 138 acres and more where he lives.

X examination:

I contracted with Richey according to the field-notes of a survey made for him prior to that time by E. G. Hanrick. Richey did not admit that he had any definite contract with E. G. Hanrick stipulating price, etc. I sold to him for $7.50 per acre.

About that time I made a written agreement with Hamp and Dan. Long to sell them about 75 acres on the Aguirre survey. In this contract I obligated myself to the agent of Wm. Brady to sell them the land for $5.00 per acre when the title was perfected. They obligated themselves to buy the land at that price when the title was perfected. At that time they were living upon the land and had some improvements, and I have since been informed that they were put in
possession by E. G. Hanrick. At the same time the Richey
379 suit was instituted, a suit was instituted for forcible entry
and detainer by E. G. Hanrick against them (Dan. and Hamp Long) in which judgement was rendered against them. They are now in possession as tenants, according to my information obtained from Capt. Goodrich. About the same time I made a contract with H. M. Schultz for about 100 acres, and also with the McFadden brothers for about 138 acres also on the Aguirrie. In about Feb'y, 1886, I made a contract with Capt. Dan. Jackson for about 20 acres, more or less. In each of these 3 last contracts the agreement was they should have the land at $5.00 per acre, to be paid at the termination of the litigation. These parties, with the exception of Jackson and those under whom they claimed, had been in possession probably long enough to have barred the rights of the alien heirs by limitation. Nothing has been paid on these agreements, and they were made more for the purpose of preventing the bar of the statute of limitation than anything else. In October, 1885, I made a contract with E. J. Merritt for 100 acres of the Zarza. He was to have it for $10.00 per acre—$100.00 to be paid Nov. 15th, 1885, and the balance in 4 equal annual instalments. At this time Merritt was in possession under a contract with E. G. Hanrick.

No money was paid on the contract until after the issuance of the writ of possession. About the same time I made a similar contract with Peter S. Brewer for 50 acres on the Zarza. Brewer bought it only for the timber, and did not take possession of it. Nothing has been paid on this land. About the same time I made also a similar contract with L. F. Bauman for 63 acres. He bought it for timber purposes. Nothing has been paid on this tract. In the summer of 1885 a contract was made with W. W. Tibbs for 300 acres of the Zarza, including the Blocker improvements. No possession was
taken under this contract, and nothing has ever been paid on it.
380 About the same time I made a contract with Wm. Brady in
person for 250 acres on the Zarza adjoining my place, 160 of which was inside of E. G. Hanrick's pasture and field. No possession was taken under this contract until after the issuance of the writ of possession. The foregoing embraces all the contracts made by the alien heirs or Wm. Brady or myself on the Zarza and Aguirrie lands prior to the issuance of the writ of possession, to the best of my recollection and belief, and I think I remember and have stated all of them except one more tract of 50 acres sold to J. W. Poole. Up to the time of the issuance of the said writ of possession none of the alien heirs or parties claiming under them took possession of any of the Zarza or Aguirrie lands, except as I have stated before.

Question. State what means, if any, were used by Hanrick or Gurley to prevent you from taking possession in behalf of the alien heirs or parties claiming under them of unfenced and unoccupied portions of the unsold and unleased portions of the Pedro Zarza grant prior to the issuance of the writ of possession.

Answer. In July or August, 1885, I received an intimation that if we attempted to run lines on the Zarza or take possession of any part of it I would meet with armed resistance. I did not get this information from Col. Gurley or E. G. Hanrick or any one authorized by them so far as I know. I immediately went to Lavaca, and telegraphed Brady and Ring for instructions. They sent back word for us to consult Oltorf & Harlan, lawyers at Marlin, and thereupon the 1st order mentioned by Mr. Pearson was obtained without notice to Hanrick *of* Gurley, as I am informed by Mr. Ring. A few
days after I received the letter from Col. Gurley herewith
381 attached and made a part of this deposition and marked
"Exhibit G." This letter is in the handwriting of Col. Gurley, and was handed to me at my house by Ed. Forney. Col. Gurley and E. G. Hanrick up to the time of the issuance of the writ of possession always denied the right of the alien heirs or those claiming under them to take possession of any portion of the unoccupied land on the Zarza. It was matter of common notoriety in the community prior to the issuance of the writ of possession that Col. Gurley and E. G. Hanrick threatened to put any one off of the land claiming under the alien heirs. At the time that letter was rec'd my 100-acre tract of land was bounded on the north and partly on the east by the Hanrick enclosure, and on the other side of the land was unenclosed. 50 acres of the 250 which I had at the time under

contract from Col. Brady lay upon the west side of my 100-acre tract and unfenced, unleased, and unoccupied land with the exception of a little house near the north line occupied by one of Hanrick's tenants cultivating a part of the farm.

The unsold land on the Zarza is all more or less valuable for pasture purposes except the timber lands. Inclusive of the sales made by Wm. Brady since the writ of possession was issued, I should say there are not less than 5,000 acres suitable for pasture purposes on the unfenced and unsold lands, and I think it was reasonably worth for pasturage a rental of 10 or 12 cents per acre per annum. I should say it had this value since 1877. My est*maite* is based upon the idea that whoever leased it would have the exclusive use of it. The fact is this land has been a free range for everybody. In conver-
sation with parties who wanted to lease this land from Col.
382 Gurley they stated to me their idea was either to line ride it
or fence it as will be the cheapest.

X examined:

There are 2 public roads running over the Zarza land: both, I think, are third-class. This land had been an open free range and free to all. Stock of many different persons are now upon the land, and as a range it is no more valuable to one than to *the* another, unless he should have the exclusive use of it. The public have had the unrestricted use of it since I have known the land. I am the same I. V. Eubanks who was defendant in a suit brought by Nicholas Hanrick some years ago, 1879 or 1880, for recovery of a tract of 100 acres of land on the Zarza grant. I was then occupying the land, claiming it as the owner under a warranty deed from E. G. Hanrick. He defended for me as my warrantor.

I. V. EUBANKS.

Sworn to and subscribed before me this 16th day of Nov., 1888.
[SEAL.] J. F. KNOX,
Notary Public, Falls County, Texas, and Special Commissioner.

H. F. RING also appeared as a witness, and after being duly sworn deposes as follows:

I am the attorney for the complainants in this case. I have had the general management and control of this suit as far as the alien heirs of James Hanrick are concerned since this suit was instituted some 10 years ago. From about the year 1880 to the year 1882 I
lived in Falls county. The defendants Hanrick and Gurley
383 have always up to the time of the issuance of the writ of pos-
session denied the right of the alien heirs or persons holding
under them to take possession of any portion of the lands belonging to the estate of Edward Hanrick, deceased. While I cannot recollect the time or recall the circumstances, I am positive that I was on repeated occasions informed by Hanrick or his agents that no one holding under the alien heirs would be permitted to take and hold possession under said alien heirs of any portion of said lands.

I tried repeatedly to get possession of portions of the land through the assistance of Mr. Gameson and Mr. Eubanks, and their testimony on file in this case shows the results of my efforts in this direction, with the exception of one contract made with Capt. W. A. J. Nicholson. In about the year 1880 or 1881 or so, I contracted to sell Nicholson 125 acres, more or less, adjoining his farm. He paid $100 down and agreed to pay the balance with interest after the termination of the litigation. He fenced the land in for a pasture under an arrangement with E. G. Hanrick also and is still in possession of it. He has never paid Wm. Brady or the heirs of James Hanrick any rent for it. I was present on the trial of the suits for the forcible entry and detainer brought by E. G. Hanrick against Cohn *et al.* testified to by Mr. Gameson in this case. To sustain the pl'tff's right to eject def'ts in that suit plaintiff introduced evidence showing what is conceded to be the fact that E. G. Hanrick had tenants scattered around on the La Serda, tenants under him, holding separate tracks of land. No evidence however was introduced showing that the lease to any tenant embraced the land in controversy in those suits. I, as att'y for these defendants,
Cohn *et al.*, took the position that this fact and evidence did
384 not show that E. G. Hanrick was in either actual or con-
structive possession of the said tracts of land when Cohn *et al.* took possession. Both the justice court and the county court on appeal failed to accept this construction of the law and judgments in both courts were rendered for the plaintiff, there being no further appeal allowed by law we were forced to submit in the matter and abandon all thought of taking actual possession, for cultivation or otherwise of any of the land in controversy.

X ex'd:

Between the dates of the suits of forcible entry and detainer which was in spring of 1886, and the issuance of the writ of possession, my impression is we made no further sales or attempted to get in possession. The contracts for sales testified to by Mr. Eubanks and Mr. Gameson as having been made in the year 1885, were made soon after the second decision of the supreme court of Texas in favor of the alien heirs reported in the 63 Texas. The other sales and contracts of sale were most of them made soon after the 1st decision of the supreme court was rendered in their favor.

In regard to the lands in Williamson county we were of the opinion the institution of the suits brought by E. G. Hanrick as the sole heir against the settlers in possession did not stop the running of the statute of limitations as to the alien heirs or parties holding under them and that if we intervened in the suits our right to recover in most instances would be defeated by the bar of limitations, and we were also liable to be left without any tangible
claim against most of the settlers by the dismissal of
385 the suits brought by E. G. Hanrick in case he should make
an independent compromise with the defendants. Such was in fact afterwards — course in the suits in Falls county brought by him against settlers for the portion of the Aguiirie one league em-

braced in the deed from Wm. Brady to Goodrich and Clarkson. All the settlers on the tracts of land embraced in this deed had title as to us by limitation, according to my information and belief, at the time of the institution of this suit, though not as to E. G. Hanrick owing to contracts with and leases from him. After the decision of the case of Hanrick *vs.* Cavanaugh was affirmed by the supreme court and after the finding of the jury again on similar evidence in the case of Hanrick *vs.* Dodd that the Aguiirie title was forged we became satisfied of the invalidity, for all practical purposes, of the Aguirrie title and determined to get what we could by way of compromise for our interest in the Aguirrie. We estimated from information on the grounds that about 6,000 acres of the Aguirrie grant in Williamson county was lost to all parties to the suit, leaving about 38,000 acres not barred by limitation as to E. G. Hanrick. Of this amount we determined to sell by deeds warranting against Hanrick and Gurley about not exceeding two-thirds to actual settlers in possession, and we did in fact sell some 22,000 or 23,000 acres according to my recollection, getting for the same $1.00 per acre, most of it in notes due 12 months from date. Also agreed at the same time to institute immediately a suit for the partition of these lands in the dist. court of Williamson county and press the same to conclusion as speedily as possible. Suit was to be instituted against Hanrick and Gurley, and in the same we were to pray that these lands sold by William Brady should
386 be set aside to the alien heirs or their assigns and that the
balance of the ten leagues should be set aside to Hanrick and Gurley. This suit was at once accordingly instituted by pleadings filed by defendant Hanrick in the case. He objected to the partition, because the land could not be partitioned, since the same was in possession of parties holding adversely to the Hanrick title. On this trial the plaintiffs were forced to take a nonsuit, owing to the objections to the introduction of depositions in evidence, sustained by the court. The suit was, however, reinstituted and is still pending. No further attempt has been made by pl't'ffs to try it, their att'y being satisfied that no valid decree of partition could be rendered in the suit in the condition of the present adverse occupancy of the land. In neither of the suits for partition just testified to were any of the persons in adverse occupancy of the land made parties to said suits, but I am informed and believe all aforesaid persons or those under whom they claim were parties to suits then pending brought by E. G. Hanrick and which has been described in the testimony of E. J. Gurley in this suit. Dec. 13th, 1878, I brought suit against E. G. Hanrick in the district court of Williamson county for a two-thirds' interest in these 10 leagues of land. In this suit complainants and Elizabeth O'Brien, of Ireland, were plaintiffs and E. G. Hanrick sole defendant. Before the trial Elizabeth O'Brien, of Ireland, was dismissed from the case and Wm. Brady and Philip O'Brien and wife were parties defendant. Before *making* the deeds to the parties in Williamson county were made the heirs of James Hanrick, who were complainants in this case, conveyed their interest to Wm. Brady for the purpose of enabling

Wm. Brady to make these deeds to the parties in William-
387 son county, they having been informed by me that it was his
expectation and intention to make the compromise for $1.00
per acre.

In regard to sales and contracts of sales made by Wm. Brady to lands in Falls county, most of the parties to whom Wm. Brady has sold or contracted to sell have gone in possession of tracts of land thus acquired by them and made valuable improvements on the same, except as to most of the tracts of land on the Aguirrie contracted to be sold by him.

On the 18th day of Feb'y, 1879, Annie, Ellen, and Nicholas Hanrick executed a power of att'y, authorizing W. C. Belcher, then of Wood county, Texas, and myself jointly with J. C. Clarke, of Brooklyn, New York, to sell and convey the interest of said grantors in the lands pertaining to the estate of Edward Hanrick, deceased. This power of att'y also contained a conveyance to Belcher and myself of an undivided ½ of the interest inherited by the said Annie, Ellen, and Nicholas Hanrick in said lands, subject to such claim upon the same as one S. Zuckerman might have under his contract with them. October, 1878, myself and J. T. Brady brought the suit of trespass to try title in the circuit court of the United States at Waco, in which the writ of possession referred to in these depositions was issued. We were not partners in the practice of the law at that time. That suit was instituted in the spring of the year 1880. Although, at this time there had been no adjustment or agreement on the part of Wm. Brady with Philip O'Brien and wife to relinquish their claim upon the interest of the said Annie, Ellen,
and Nicholas Hanrick, I did not regard their interest as antago-
nistic. I did not think their claim amounted to anything
388 whatever and did not think that it would ever be insisted
upon. This was also the opinion of John T. Brady. It is my opinion that Wm. Brady for some time seemed to think that he had some sort of right under those deeds. I don't recollect of hearing him concede that he had none. I am satisfied though, that he was advised by John T. Brady that he had none, and afterwards John T. Brady, as his att'y, filed a disclaimer for him. Before said suit was filed at Waco we had dismissed as to Philip O'Brien and wife and Wm. Brady for want of service on them. After the reversal of the case on the 1st appeal to the supreme court of the State, they were again made parties immediately after the ruling of the district court of Falls *court* on the demurrer. I met John T. Brady & Wm. Brady in Houston for the first time. We talked the matter over—his claims and those I represented. The result was that I agreed to make no further contest over his conveyance from Elizabeth O'Brien, of Ireland, to Eliza M. O'Brien, wife of Philip O'Brien, and he paid me $500.00, which went as a contribution on his part for the work and expense in settling the *the* alienage question in the supreme court of Texas. He made no further contributions until after the case was briefed and argued in the supreme court. At that time I requested Wm. Brady to relinquish his claim as to the interest of Ellen, Annie, and Nicholas Hanrick, which he

declined to do. He seemed to think he had some rights against their interest.

H. F. RING.

Sworn to and subscribed before me this 17th day of Nov., 1888.

J. F. KNOX,

[SEAL.] *Notary Public, Falls County, Texas, and Special Com'r.*

389 L. W. GOODRICH also appeared as a witness and, after being duly sworn, deposes and says as follows:

I moved from Waco to Marlin in Sept., 1870, and have since that time resided at Marlin. Immediately upon settling here I was employed by Col. Gurley in the care, control, and litigation of the lands belonging to the Hanrick estate in Falls county. Upon investigation I found several suits pending in the dist. court of Falls county affecting the title and possession of said lands. Among those that I now remember was a suit of forcible entry and detainer brought by Col. Gurley as att'y for E. G. Hanrick against Abby Chambers, administratrix of the estate of T. J. Chambers *et al.* in the justice court and moved by certiorari to the district court. This suit was brought to recover the possession of that part of the Laserda grant which conflicts with what is known as the back 5 leagues of the T. J. Chambers grant, the conflict being about 9,400 acres, the parties in possession claiming to be tenants of the estate of T. J. Chambers. I succeeded in disposing of the case in the dist. court favorably to E. G. Hanrick and the defendants appealed to the supreme court, when the appeal was dismissed on my motion and a writ of restitution was issued November, 1871, and was executed at that time by the sheriff of Falls county, placing me in possession as the agent of E. G. Hanrick. In executing the writ I found many other persons upon the land besides the parties def't in the writ. I succeeded by negotiation in getting an acknowledgement of tenancy under Hanrick from most of them. These parties were mostly squatters upon the land, claiming no right except what they had by virtue of their possession and the improvements made by them.

390 The condition of the country at that time, as well as the pending litigation with the estate of T. J. Chambers in the Federal court at Austin, precluded any more decided action, and the parties remained in possession, nominally as tenants of E. G. Hanrick. The absolute control of said lands was not had until after the settlement of the Chambers litigation in the Federal court. It was difficult to keep a squatter from settling upon the land and required constant care and supervision to retain even a nominal control of the land.

Besides this suit I found also pending in this court a suit of forcible entry and detainer against J. W. Standridge *et al.*, brought by Col. Gurley as att'y for E. G. Hanrick to recover from said def'ts portions of the Pedro Zarza grant occupied by them. I think most of the def'ts were located upon the conflicting headright leagues bordering on the river. This suit was also disposed of favorably to E. G. Hanrick, who recovered the possession from them in 1871. I think there were also two suits pending in the district court of Falls county against one Rob't Moore, brought by E. J. Gurley as att'y for E. G. Hanrick, one for forcible entry and detainer and one suit brought originally in the dist. court of Falls county for the recovery of 640 acres of land, a part of the Zarza, and Moore was claiming under a contract with a man by the name of Ables, who claimed to own the Zarza title. There were two trial- of the case in the dist. court, which finally resulted in favor of E. G. Hanrick. The case was stubbornly and ably contested, the Hon. Richard Coke being of counsel for said Moore. In the progress of the suit a writ of sequestration was issued and served. There was also a suit pending in said court, brought by Wm. Duty against E. G. Hanrick, to recover 320 acres out of the Zarza grant on an alleged contract by said Duty with Edward Hanrick, deceased. This 391 suit was determined against E. G. Hanrick in the dist. court, which on appeal to the supreme court by us was affirmed. There were also pending in said court two (2) suits brought by Simon Mussina, as the attorney of R. D. Aguirrie, against E. M. Long to recover the one-league Aguirrie in Falls county. It appeared from the record that these suits were instituted in 1858. The name of E. J. Gurley appeared as counsel for the defendant, who, I am informed by said Gurley, was tenant of said Edward Hanrick, deceased. These suits were finally disposed of in 1874, being dismissed for the want of prosecution. In 1871 I formed a partnership with B. B. Clarkson, Esq., and we, in conjunction with Col. Gurley, appeared for E. G. Hanrick as counsel in all of said cases. A great many other suits concerning the title and possession of said lands and contracts relating to the same have been brought and disposed of since that time.

In the division of the business of our firm it became especially my duty to supervise and control the interest of E. G. Hanrick and E. J. Gurley in the La Serda lands, and I became familiar with said lands and the various improvements and possessions on the land immediately upon taking charge of the business in 1870. A large part of the land was then unoccupied and unimproved and still remains in that condition.

Referring to the list of improved places mentioned in Exhibit Y attached to defendant Hanrick's answer, filed Jan'y 2nd, 1888, the last three named, viz., H. J. McCorkle, James Barton, and Hugh Parton, are recent improvements. All of the others were made years ago; most of them before I came to Falls county and none of them since 1874, except possibly the improvement in the name of Steve Bryant was in part made since that time; the other places 392 named when I came to the county I found occupied by squatters and persons claiming under the estate of T. J. Chambers. As before stated, I succeeded in obtaining acknowledgements of tenancy from persons occupying said improvements, and in course of time was in full control of them, but had never rec'd rents from any of the places except a small amount from the improvements in the name of Hale and in the names of T. J. Parton, Wm. Banks, and G. W. Pate, in all up to this time not exceeding $200.00. The termination of the litigation with T. J. Chambers' estate strengthened our hold on the improvements, so that when this suit was filed in Dec., 1878, we were in a fair way to receive some revenue from rents; we had also made some contracts to sell land which were also pending at that time. The policy of complainants in this suit was such that when we pressed parties for the payment of rents or purchase-money due by them on their contracts they combined with the complainants in many instances and attempted to turn the possession over to the agent of the complainants under more favorable contracts which he conceded to them & thereafter set up right adverse to E. G. Hanrick. This involved E. G. Hanrick in vexacious and expensive litigation and had the effect to deprive him entirely of the rents and revenues of all of said improvements. The expense and trouble of looking after and control-ing these improvements and preventing adverse occupancy was more than equal in value to the improvements, and the circumstances I have related prevented us from receiving the rents.

As to the value of unoccupied lands for pasturage on the La Serda, the lands have been unfenced and have been as an open range free to all ever since I came to the county. If the lands could be exclusively used by any person they would, of course, have some value as pasturage lands.
393 This, however, was hardly possible previous to the time barbed wire come into general use, which in this section was in about 1881 or 1882. None of the joint tenants having any right to the exclusive use of any particular part of the land could make leases, and the uncertainty of the time when this suit would be determined made it very improbable that the def't Hanrick could have made a lease for any rent per acre, and in fact no one applied for such leases.

As to the forcible-entry suits against Cohn and McGahee referred to in Mr. Ring's and Mr. Gameson's testimony, I had, as the agent of Mr. E. G. Hanrick, tried to prevent the entry upon the land of Mr. Hanrick and occupancy adverse to him since I first took charge of his business, and in 1885, finding Cohn and Magahee and one Parsley and a man by the name of Ellis in possession of pa-ts of the La Serda grant, situated in Little Sandy creek, and engaged in cutting timber. I brought suit for forcible entry and detainer against Cohn and McGahee in the spring of 1886. Ellis and Parsley had at that time left the country, as I was informed. They had each cut quite a quantity of timber, which they had sold. McGahee and Cohn were in possession, claiming adverse to Hanrick and denying his right. After judgement against them they continued to remain in possession by my consent as the att'y of Hanrick, and by their consent we cut and sold the timber suitable for ties standing on the tracts claimed by them. Their possession now is not adverse to any of the joint owners so far as I know.

As to the Aguirrie league in Falls county and the 10 leagues of the same in Williamson county, my professional duties did not con-

nect me with that litigation until about the year 1874, at
394 which time one A. M. Jackson filed and located land certificates
covering the league in Falls county and several thousand
acres of the tract in Williamson county. Col. Gurley, assisted
by W. M. Walton, Esq., and our firm, brought suit for E. G. Hanrick
in the dist. court of Falls county to recover the land located upon
by Jackson in both counties. The case came to trial in the district
court and resulted in a judgement adverse to Hanrick, from which
he appealed and succeeded in reversing it in the supreme court.
The opinion is reported on page 17 of the 55th Texas Reports.
Another trial was had in the district court, which resulted in a
judgement in favor of Hanrick for all of the land. The land was
largely occupied when the suit was brought, though the occupiers
were not made parties defendant, under the idea, as I was at the
time informed by E. J. Gurley, that said occupiers had entered by
his consent and were not adverse. During the progress of the litigation
various other persons entered upon both tracts and made
location upon the Williamson County tract. Suits were brought
against these persons in Williamson county by E. J. Gurley and
his associate counsel as att'ys for E. G. Hanrick in the spring of
1878. These persons refused to yield to the decision of the supreme
court as to the validity of the Aguirrie title, but defended and set
up title in themselves under their locations, pre-emptions, etc., and
alleged the Aguirrie title to be forged. These suits, 90 in number,
involved a large portion of the Aguirrie grant. All of the defendants
made substantially the same defence, and some of them, as I
am informed and believe, have the additional defence of adverse
possession and limitation. The suit of Hanrick *vs.* Cavanaugh
was first tried before a jury, demanded by Cavanaugh, and resulted
in a verdict in his favor on the issue of forgery,
395 which verdict on appeal to the supreme court was sustained
and is reported in the 60th Texas, p. 1. The case of Hanrick
vs. Dodd was next tried in the same court and resulted also in a verdict
for defendant, which also upon appeal was affirmed and is reported
in the 62nd Texas, p. 75. I was present upon the trial of
both of said cases in the district court and also upon the trial of the
case of Hanrick *vs.* Jackson; was of counsel and heard all testimony
in each case. The issues submitted and the testimony in support of
them *was* substantially the same in all of the cases. Counsel for Hanrick,
alleging that they could not get a fair trial in Williamson
county before a jury, procured a change of venue in all of the cases
to Travis county, where they are still pending. Additional testimony
has been taken in behalf of Hanrick on the issue of forgery
since the last trial. After the trial of the cases of Cavanaugh and
Dodd, the persons living on the Aguirrie league in Falls county
set up adverse right in themselves, and E. G. Hanrick and E. J.
Gurley purchased the certificate in the name of Hannah Donahoe,
being the same which A. M. Jackson had located upon the Aguirrie,
as hereinbefore stated. We had tried the suit against Jackson under
the impression he was the owner of the certificate, which we now found
upon investigation not to be the case, and to prevent litigation on

the same certificate Hanrick and Gurley bought it, as above stated, and thereupon brought suits against these parties in the spring of 1884, and upon the certificate patent was issued to E. G. Hanrick, assignee, a copy of which is attached to these depositions. These suits were pending when the complainants and William Brady conveyed to the defendants in the Williamson County cases, as
396 testified to by H. F. Ring, Esq., and thereupon in July, 1885,
and Jan., 1886, Hanrick and Gurley compromised with a number of the defendants on the Aguirrie and Donahoe conflicting league in Falls county and conveyed to them by quitclaim deeds, as shown in the exhibit, and dismissed the suits against them. The defendants in some of the suits are still resisting the title of Hanrick and Gurley.

I only know of the services rendered by E. J. Gurley in support of the rights and title claimed by the Hanrick estate since my connection with the business in 1870. The litigation since that time has been protracted and difficult and has resulted favorably to the estate. In my opinion there can be no doubt but that nearly all the La Serda and a considerable portion of the Zarza and all of the Aguirrie grants would have been lost to the estate unless active, vigorous, and persistent efforts had been made and suits ably conducted. In my opinion one-third of the lands is a very moderate fee for the services performed by him and his assistants. Such fee was usual and customary in like cases but a short time ago. I am informed and believe that counsel for the alien heirs of Edward Hanrick, deceased, received as fee for their services one-half of the recovery, and such fee is not unusual in difficult cases.

L. W. GOODRICH.

Sworn to and subscribed before me this 5th day of Dec., 1888.

[SEAL.] J. F. KNOX,

Notary Public, Falls Co., Tex., and Special Com'r.

I, J. F. Knox, a notary public in and for the county of Falls, State of Texas, do hereby certify that the above and foregoing 61 pages of testimony *was* reduced to writing by me in presence of the
several witnesses respectively, who each signed and swore to
397 the same before me at the times mentioned.

Given under my hand and seal of office this the 5th day of Dec., 1888.

[SEAL.] J. F. KNOX,

Notary Public, Falls Co., Tex., and
Special Commissioner by Agreement.

398 File 1908, Milam 1st class, vol. 24, No. 404.

In the name of the State of Texas.

To all — whom these presents may come:

Know ye I, John Ireland, governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided, do by these presents grant to E. G. Hanrick, ass'ee of Hannah Donahoe, alias Alexander, his heirs or assigns forever, twenty-four million eighteen thousand eight hundred and ninety (24,018,890) sq. vrs. of land, situated and described as follows: "In Falls county, between Deer creek and Cow boyou, west of the Brazos river, about 12 miles S. 82 W. from the town of Marlin, by virtue of special-act head-right certificate No. 181, issued to said Donahoe alias Alexander by the com'r of claims, Feb'y 24th, 1860, and by said Donahoe, formerly Alexander, transferred to Flavius Everett, Sept. 12th, 1870, and by said Everett transferred to James C. Walker, Sept. 29th, 1870, and by said Walker transferred to C. C. Kaufman, Oct. 6th, 1874, and by said Kaufman transferred to E. O. Standard, May 27th, 1881, and by said Standard transferred to said Hanrick, Feb'y 25th, 1884. Beginning at the S. E. cor. of a survey of $80\frac{1}{2}$ acres for C. W. Sewell, in the north line of José Antonio Manchaca grant, an elm marked 'A' b'rs N. $74\frac{1}{2}$ E. $25\frac{1}{5}$ vrs.; thence north 28 W. 489 vrs. to Sewell's N. E. cor. in S. line of James G. Gray's survey, a mes. 10′, marked X, b'rs N. $46\frac{3}{4}$ W. $98\frac{2}{5}$ vrs., do. 9′, m'k'd Y, b'rs *b'rs* N. $81\frac{1}{4}$ W. $118\frac{3}{5}$ vrs.; thence north 62 E. 1,093 vrs. to the S. E. cor. of said Gray's survey; thence N. 28 W. with the E. line — said Gray 2,011 vrs. to a corner in S. line of the Pedro Zarza; thence N. 62 E. with 399 said line 9,907 vrs. to the S. E. cor. of the Zarza in the west line of Juan J. Acosta 2-league survey; thence S. 28 E. with said line 1,460 vrs. to a cor. in N. line C. B. Stubbins' league, a double elm 5′ b'rs S. 46 E. 1.9 vrs., a P. O. 14′, marked X, b'rs N. 33 W. $24\frac{2}{5}$ vrs.; thence S. 60′ W. 1,279 vrs. to N. W. cor. said Stubbins' lea.; thence 30′ E. with the W. line of said lea. 996 vrs. to a cor. in north line of said Manchaca, a mes. 5′, m'k'd X, b'rs N. $15\frac{1}{2}$ E. 5.1 vrs., do. m'k'd X b'rs S. $67\frac{1}{4}$ W. $18\frac{1}{5}$ vrs.; thence S. 62 W. with said Manchaca line 9,757 vrs. to the beginning," thereby relinquishing to him, the said E. G. Hanrick, ass'ee, and his heirs or assigns forever, all the right and title in and to said land heretofore held and possessed by the said State, and I hereby issue this letter patent for the same.

In testimony whereof I have caused the seal of the State [SEAL.] to be affixed, as well as the seal of the general land office. Done at the city of Austin on the eighteenth day of [SEAL.] Febr'y, in the year of our Lord one thousand eight hundred and eighty-six.

JOHN IRELAND, *Governor.*

W. C. WALSH,
Com'r of the Gen'l Land Office.

Endorsed: No. 404, vol. 24. E. G. Hanrick, ass'ee of Hannah Donahoe, alias Alexander.

EXHIBIT B.

400 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} 1728. Suit Pending in the District Court Falls County, Texas.

In vacation.

To the Hon. W. M. Flournoy, special judge appointed to try said cause:

Your petitioners, the plaintiffs in the above-entitled cause, would respectfully represent unto your honor that said suit is one of trespass to try title, as well as for partition and damages; that the defendant Hanrick claims that a large portion of the tracts of land sold by him, as described in section 32, page 18, of plaintiffs' 6th amended original petition, has been in the possession of the purchasers of the same long enough for a title to the same to have been acquired by such purchasers by limitations, and that all such tract-thus sold by him and to which such purchase-s have thus acquired a title by limitations should be excluded from the consideration of the court in its decree of partition prayed for in said petition, and that only that portion of the land in controversy should be divided between plaintiffs and defendants left after deducting all such tracts sold by plaintiff-.

Petitioners further represent that the said E. G. Hanrick has sold off many parts of the land not shown in plaintiffs' said petition and not shown in the records of Falls county, but which said tracts are in the actual possession of such purchase-s, but the boundaries of which are unknown to petitioners.

That it is necessary for a full and accurate survey of said lands
to be made before said suit for partition *id tired* in order that
401 the rights of all parties to be *e*ffected by the decree may be
ascertained and properly protected; that without such survey having been made plaintiffs will be unable to protect th*ier* rights on the trial of said cause.

The premises considered, the plaintiffs pray your honor to appoint a surveyor, authorizing and directing him to survey the premises in controversy and prepare and present to this court at the next term thereof a map show*n*ing all of the tracts of land on said premises in possession of parties claiming the same under title from E. G. Hanrick or E. J. Gurley or any of the defendants and the boundaries of the tracts thus held in possession by them; and petitioners will ever pray, etc.

H. F. RING,
J. D. OLTORF,
Att'y- for Plaintiffs.

IN CHAMBERS, *Aug. 19th*, 1885.

I, W. M. Flournoy, special judge appointed to try said cause and duly qualified as such, hereby appoint Ed. Pierson, of Falls county, surveyor, as prayed for in this petition, hereby authorizing and directing him to survey said lands as herein prayed and to prepare and present to said court at the next thereof a map described and all the necessary accompaniments of the same.

WM. M. FLOURNOY,
Special Judge.

I, Chas. H. Bartlett, clerk of the district court of Falls county, do hereby certify that the above and foregoing is a true and correct copy of an application for appointment of a surveyor as the same appears on file in my office, together with the fiat of the 402 judge appointing Ed. Pearson as surveyor to survey the lands as applied for in said application. This 19 day of Aug., 1885.

CHAS. H. BARTLETT,
C. D. C., F. C.,
By Z. M. BARTLETT, *D. C.*

Endorsement: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Application for an appointment of a surveyor and fiat of judge appointing same. Filed Aug. 19, 1885. Chas. H. Bartlett, C. D. C., F. C., by Z. W. Bartlett.

District Court Falls County, Aug. 25, 1885.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
No. 1728.

To the Hon. Wm. M. Flournoy, judge, etc.:

The defendant E. G. Hanrick represent- to your honor that under the order of survey recently made in this case upon the application of plaintiff- def't — informed and believes and charges that said plaintiffs will require that the surveyor shall survey off tracts of land sold by him or for the purpose of being sold by him or conveyed to other parties in entire disregard of the possession and rights of possession of defendant. Defendant therefore asks that your honor will instruct the surveyor in making said survey to confine himself and his work to the original lines of the respective grants & to the lines of such surveys as the def't has sold and conveyed to other parties, and that the possession of def'ts shall be fully respected by said surveyor. We do not waive any objections we may have to the survey by asking these instructions to the surveyor.

E. J. GURLEY AND
GOODRICK AND CLARKSON,
Att'ys for Defendant.

403 IN CHAMBERS, *Aug.* 25, 1885.

The prayer of the above and foregoing petition is granted, and the surveyor named in the order of survey heretofore made in this cause will confine himself to the lines of the original surveys and those tracts heretofore sold by the defendant E. G. Hanrick.

WM. M. FLOURNOY,
Special Judge.

STATE OF TEXAS,
County of Falls.

I, Chas. H. Bartlett, clerk of the district court of Falls county, Texas, do hereby certify that the above and foregoing is a true copy *on* the defendant E. G. Hanrick's — to the Hon. Wm. M. Flournoy, special dist. judge of the dist. court of Falls county, in the cause of Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* to perform his, said judge's, order of survey in said cause and of said judge's order therein on file in said cause.

Witness my hand and seal of office, at Marlin, on this the 28th day of August, 1885.

CHAS. H. BARTLETT, *Clerk.*

EXHIBIT F.

Duplicated.

AUG. 25, '85.

Mr. Eubank.

SIR: You and others combining with you have been threatening to make entry upon our lands and to deprive us by force of our possessions. Of this I have abundant proof. Now, in view of this fact and the further fact that we think you have been duped into this high-handed, unlawful purpose by those you claim to represent, 404 I give you warning to keep off of our lands. Any attempt to run any line or make any corner, build any fences or houses, or cut any timber will not be treated as an ordinary trespass, but will be dealt with by force. Any entry you may make for the purpose of selling or showing our lands or offering *it* for sale or lease or rent I will consider and treat as a forcible entry. I learn that you claim some land adjoining your place and threaten to take possession. I warn you not to cross your original lines with any fence and not to attempt any act of possession outside your purchase from E. G. Hanrick.

E. J. GURLEY.

EXHIBIT G.

Endorsement: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* In equity. Depositions of E. J. Gurley; 2, J. W. Gameson; 3, Ed. Pierson; 4, H. F Ring, and, 5, L. W. Goodrich. The within depositions were taken by consent before J. F. Knox, N. P., Falls county, all formalities being waived, and it is agreed that same may be read in evidence in above cause. E. J. Gurley, Goodrich & Clarkson, H. F. Ring, J. T. Brady. Filed Dec. 11th, 1888. J. H. Finks, clerk, by Chas. H. Lednum, dep'ty.

405 It is agreed that the attached affidavit of defendant Gurley may be introduced in evidence on the trial of said cause, subject to objections as here stated and agreement relative to same:

1st. Complainants object to so much of the statement contained in said affidavit as purports to show any transaction with Edward Hanrick, deceased, had by affiant, because affiant is incompetent to testify as to such matters.

2nd. Complainants object to the introduction in evidence of all of said letters attached to said affidavit written by affiant, because the same are irrelevant and because it is not competent for affiant to prove the facts referred to in said letters by the contents of the same and because said letters do not constitute the best evidence.

3d. Complainants object to the introduction in evidence of the letters attached to said affidavit which purport to have been written by Hale and Hancock, because it is incompetent for the affiant or def't to attempt to establish any fact in this case by such evidence.

4th. It is agreed that said affidavit and said letters shall be subject not only to the objections above pointed out, but to all others of any character whatsoever which might be urged against the same or which may be hereafter pointed out at any time before the final determination of this case, except as to the fact of its not being regularly taken.

H. F. RING,
Att'y for Complainants.
J. F. BRADY,
Att'y for Def't O'Brien et al.
GOODRICH & CLARKSON,
Att'y- for E. G. Hanrick et al.

Endorsed on back: Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Agreement to admit Gurley's affidavit. Filed Dec. 11, 1888. J. H. Finks, clerk.

406 NICHOLAS HANRICK *et al.*
vs. } In Equity.
E. G. HANRICK *et al.*

Testimony of E. J. Gurley.

After I was employed, in 1858, by Edward Hanrick I met him frequently and talked with him about his business, and wrote and rec'd from him many letters upon the subject. Some of the letters I wrote to him I hereto attach as exhibits. I recognize them as genuine. I wrote them and sent them by mail, and I recognize the endorsements on them as being in his handwrite. They were handed to me by E. G. Hanrick's att'y. I also attach as exhibits some letters I received from him by mail, and have held them in my possession to the present time. I know them to be in his handwrite and that they are genuine. I also attach some letters written by Mr. Hale to myself which were received by me by mail, and have been in — possession ever since. They are in his handwrite and are genuine. I attach also some letters written by Judge Hancock which I have rec'd from the att'y of E. G. Hanrick, and I know them to be in his handwrite and genuine.

From 1858 to 1861 we, Hancock & West, Hale and myself attended to Hanrick's business as his att'ys without any stipulated fee, but with the understanding that he was to give us an interest in the land. During that time and especially in the year 1860 negotiations were being had between us in reference to the fees, and Mr. Hanrick agreed to give us a one-third interest in his lands for our services, and executed a deed to me in 1871 for an undivided one-third interest in the land, this being the fee Mr.
407 Hanrick had agreed in his lifetime to give his att'ys. When the deed was made to me I agreed by a cotemperaneous instrument to pay all att'ys' fees necessary to perfect the titles to said lands, and I have done so up to this present time—that is, I have paid some and assumed to pay others, relying upon the said one-third interest to enable me to do so. I have received no compensation for my services or for the money expended by me except the one-third interest above mentioned.

The letters above mentioned and attached hereto are marked No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21. The first negotiations with Mr. Hanrick in regard to a contract for professional services was by Hancock & West and myself, Mr. Hale not willing to become a party. A proposition was made by Hancock & West and Gurley in regard to the fees and submitted to Mr. Hanrick, but afterwards Mr. Hale's objections to coming in was withdrawn upon a satisfactory fee of $6,000.00 in money. This fee was first agreed upon by Hancock & West and myself and Mr. Hanrick in the fall of 1860, here in Texas, and in Dec. following the same was agreed upon by Mr. Hanrick and Mr. Hale in Washington city, and in 1861 the contract was written out by Judge Hancock and signed here in Texas by Hancock and West, Mr. Hanrick, and myself and sen- to Mr. Hale for his signature and safe keeping. All the parties to that contract acted under it as a valid and binding instrument up to the time of Hanrick's death, the said att'ys continuing to render services to Hanrick. After the death of Edward Hanrick, in 1865, Hancock and West withdrew from his business, and Mr. Hale and myself arranged for me to take full charge of all the business
408 in Texas, and him to take charge of all the cases in the Supreme Court of the U. S., and to assist me in the trial of cases in Texas when he could. In making this arrangement we both were acting under the contract already made with Mr. Hanrick in his lifetime and were trying to carry it out, and Mr. Hale at that time agreed that I should take the one-third interest which Mr. Hanrick had agreed to give us and pay him in money for his services. All this was done with E. G. Hanrick's knowledge and consent, he at that time acting as sole heir and adm'r of Edward Hanrick's estate, E. G. Hanrick'- *then* arrangements being made with him as to the labor he was to perform, and he joined with us in the contract. Mr. Hanrick agreed to give us a large part of the

land and $6,000.00 in money. The proposition above referred to is hereto attached and numbered 17. It was signed by me and Judge Hancock and by us submitted to Mr. Hanrick, and I received it from E. G. Hanrick's custody after his death.

The said contract between Edward Hanrick and Hancock and West, Mr. Hale and myself has been lost or destroyed. Mr. Hale's papers after his death were scattered, and some of them by some means fell into the hands of Mr. Branch and some into the hands of pl't'ffs' counsel, and I have inquired and searched diligently for said contract and could not find it from said search and inquiries. I am satisfied that it is not in the hands — Mr. Hale's representatives or of the said Branch or pl't'ffs' counsel, and I do not know where else I could reasonably expect to find it.

E. J. GURLEY.

Signed and sworn to before me this 11th Dec., 1888.

J. H. FINKS,
U. S. Commissioner, N. D. Tex., at Waco.

Endorsed: 52. Hanrick *et al. vs.* Hanrick *et al.* Filed Dec. 11th, 1888. Testimony of E. J. Gurley, with 21 exhibits.

409 AUSTIN, TEXAS, *Oct. 17th*, 1858.

E. J. Gurley, Esq.

DEAR SIR: I arrived here this evening safe and well. I have seen no person yet, but will go to work tomorrow morning bright and early. While we were changing stage horses at Wm. Jackson'-yesterday I met Mr. Mixon at the stable and he was coming to see me. He says that he wants some of the timbered land that I own, and he said that Wm. Jackson wished to see me. I told him when I went up to Waco again I would see Mr. Jackson. I told Mr. Mixon about the Rector survey, and he told me that he knew where the golinda corner was, and could point it out to you or myself at any time, and he further said that Rob't Moore acted in very bad faith with me. He said he was going up to Waco in a few days. I told him to call upon you; that you were my agent for all my lands up in Falls county, and that he must call and see you. He promised me that he would do so. I sent you a note the morning I left about the cedar brake that it ought to be taken care of. I have no news. I will send you the field-notes and the sketch as soon as I can do so.

Yours truly, EDWARD HANRICK.

Filed Dec. 11th, 1888. No. 8.

J. H. FINKS, *Clerk.*

AUSTIN, *Oct. 21st*, 1858.

E. J. Gurley, Esq.

DEAR SIR: I have not succeeded here in my trip to Williamson county as I expected to have done when I saw you last, and I
410 must see you about it when I go up to Waco, and I expect I will
have to make arrangements with you to go with me into Wil-

liamson and Bell counties to see what we can do there, for I expect I will have to get you to attend to all my interest in lands in Texas, and if I do so I will make it to your interest to do so for me, for I am compelled to have some person to attend to my land business, that will take a-hold of it *for it* for me, that will go through with it for me, and I know that you can do so if you take a-hold of it for me and which I will want you to do so, for I do not know any other that I can depend upon. I did expect to have gone up to Marlin — the stage, but Judge Dival is going up on Sunday, and I will go up with him and get there on Monday morning, and I wish you would have arrangement for horses for us to ride so we can have them on Tuesday on our trip to Falls county and get through there as soon as we can do so, and then I shall want you to come to Austin with me and take a-hold for me there, and I want to consult and advise with you about some propositions that has been made to me before I do anything about it. Have everything ready so we start on Tuesday next for Falls county.

Yours truly,
EDWARD HANRICK.

Filed Dec. 11th, 1888. No. 10.

J. H. FINKS, *Clerk.*

AUSTIN, *Dec. 5th*, 1858.

E. J. Gurley, Esq., Waco.

DEAR SIR: Mr. Hanrick has informed me of the aid which you have rendered him, and has requested me to state to you the condition of affairs here.

There are three suits on the docket of the U. S. dist. court
411 here in which Mr. H. is particularl*t* interested; two, Hanrick *vs.* Jackson & Hatch and Hanrick *vs.* Duty *et al.*, relating to the Zarza four leagues, and one, Davila *vs.* Mumford *et al.*, relating to the Davila eleven-league grant. Of these, the first, Hanrick *vs.* Jackson & Hatch, is to be dismissed without prejudice, and the second, Hanrick *vs.* Duty *et al.*, had better, on the whole, be continued. As it stands, Mr. H. has agreed with Rubles to do nothing in this until R. has ascertained whether he can properly or safely make the intended compromise, and also the def'ts might sever; still it is best if we try any to try all together. I have therefore spoken to Mr. J. A. Green, who represents Rubles, and he tells me that he will write to Mr. Craik, who represents some of the -ther def'ts, to ascertain whether he wishes to try or continue; that he will inform me of the conclusion in time to enable me to be at Austin, if necessary. I have no doubt they will continue.

The third case stands in this position: Munford severed from the other def'ts; a trial was had and a judgement rendered for him; Mr. H. has taken a writ of error, and the cause *in* now in the Supreme Court. Col. Allen, my partner, who tried the case, stated to me that it w-s the understanding with the other def'ts that the rest of the case should stand over until the decision of the Supreme Court. The case ought therefore to be continued. If, then, I am not at court will you do Mr. Hanrick the favor to appear for him, dismiss

the first case on the chancery docket without prejudice and continue the other two? There is still another case in which Mr. H. is interested, Garnar *vs.* Ufford *et al.*, but Judge Hancock will attend to that. In regard to the Davila eleven leagues, Mr. H., I understand, has already written to you desiring you to obtain in-
412 formation as to the names of the settlers on the tract, and in
rega-d to the Antonacio de la Serda tract I believes he has also desired you to do the same. I shall write to you further about these matters. As I leave here tonight for Corpus Christi, I would request you not to direct my letter- to this point, but to Galveston.

Very truly yours, WM. G. HALE.

Wm. G. Hale. No. 16. Filed Dec. 11th, 1888.
J. H. FINKS, *Clerk.*

AUSTIN, TEXAS, *Dec. 2nd*, 1859.

MY DEAR SIR: I have just completed my fall circuit of courts, and regret I have not more cheering news to give you than the facts with reference to the Aguirrie ten leagues in Williamson Co. will warrant. Most of these you know already and a recurrence to them will only be made to satisfy you that other arrangements with reference to that land will have to be made by you. In the first place, then, let me call your attention to the ineffectual efforts we have made to get and hold possession of the land. When we have gone on the premises the settlers, tho' knowing the U. S. marshal was along with a writ of possession to put you in and them out of possession, have assembled in great numbers—not only those on this grant, but such as were in possession of the Zarza grant, manifesting unmistakably a hostile combination—to hold the land, not, probably, by actual for*ca*ble resistance to the marshal, but to refuse to assist him in the execution of the writ and, should he get any off, to repossess the place thus vacated by some one of their party as soon as night set in or the marshal's back *were* turned, threatening all the time suits for damage against the marshal and all
413 who might assist him, and, when we got possession and
placed two families actually on the grant, commenced a systematic course of annoyance by setting fire to fences, burning up the houses, admonitions of great personal danger to those holding under you, so that their families became greatly alarmed, and if the houses had not been burned down I doubt if your tenants could have been induced to remain, so great*ly* had become the terror of the women from the oft-repeated friendly admonitions of certain and inevitable destruction if they persisted in holding under you, and extreme measure-, even to hanging, should become necessary. The result, as you have learned, was, we could not keep the possession well. I can well imagine the remedy you suggest in your mind for this state of things—that is, the steady and firm enforcement of the law. Very good; it will succeed ultimately, I have no doubt, but when I cannot conjecture. First, because the settlers on your land are not alone; if they were, they could be gotten rid of in a short time, but they are backed up and instigated by the*re*

neighbors on the Zarza grant and their att'ys. In fact, pretty much the whole surrounding community take sides with them. This state of things can only be overcome by the three cardinal virtues, time, patience, and perseverance. We were making some headway, which was broken into by another Richmond appearing in the field. Alexander, as the agent and att'y of Aguirrie himself, by bringing suit and obtaining an injunction against you, has produced a feeling of security which renders it next to impossible to do anything at present—to do anything with these people short of giving them the land they claim, and I really doubt very much if there are not several of them who would not 414 receive a deed from you as a gratuity. We have spent the last year, I find on casting up accounts, near a thousand dollars, besides labor and loss of time, and now the difficulties are far more formidable than when we commenced. Now, can anything of much importance be done till Alexander's suit is disposed of? This is the view I take of the affair from all the facts now surrounding it, and I hope you will agree with me that other and different arrangement- should be made. We cannot afford to carry on the business as heretofore. The state of things have greatly changed, so much so that no one can reasonably expect anything to be realized for years to come. It necessarily results that those who carry it on must make their arrangements to wait for compensation, for, in addition to other misfortunes, I understand Judge Terrel thinks that he is disqualified from trying the suit broughby Alexander by reason of having been of counsel of some one interested. Well, there is some consolation in the reflection that affairs are about as bad as they can well get. M. M. Potter, Esq., is here; brought up all the papers, etc. Hope to see you out this month and that this may find you in good health.

Very truly, your obedient servant,

JOHN HANCOCK.

To Ed. Hanrick, Esq., Montgomery, Alabama.

Endorsed: John Hancock. Dec. 2nd, 1859. No. 14. Filed Dec. 11th, 1888. J. H. Finks, clerk.

415 In conformity to your request that we state in writing the terms on which we would be willing to take charge of your land claim as lawyers, as well as your agents, to be paid in part of the land to which your title may be established, the engagement on our part to extend to your titles to the grant to Aguirrie eleven leagues, to Davila for the same amount, to La Serda for the same amount, and to five leagues of a grant to Zarza; to attend to all suits now pending or that may be hereafter instituted with reference to either of said titles, except such as may be pending at Galveston, and to acts as your agents in protecting your several tracts of land, as such make compromises, settlements, and sales, these services we are willing to undertake and perform for one-fourth of what may be held by you of the Davila grant, one-fourth of what you may recover of the Zarza five leagues, for one-third of the Agui-

rie grant, and for one-third of the La Serda grant of what you may ultimately hold of each; you to defray the costs and incidental expenses of litigation.

JOHN HANCOCK.
E. J. GURLEY.

Jan. 21st, '60.
Ed. Hanricks, Esq., Austin, Texas.

Endorsed; Jan. 21st, 1860. Hancock and Gurley proposition to Ed. Hanrick. No. 17. Filed Dec. 11th, 1888. J. H. Finks, clerk.

GALVESTON, *Feb.* 14*th*, 1860.

Edward J. Gurley, Esq.

DEAR SIR: I arrived here on Thursday night last and I did expect to have written you from Austin, but did not do so. I sent a check
for $1,000.00 *dollars* to S. O. Nelson and Co., to be placed to your
416 credit and to advise you of the same; also to acknowledge the
rec'pt to me at Montgomery, Ala. I saw Chas. Stuart here, and he wants to purchase 2,000 acres of land on the five leagues east of Marlin. I told him that I did not want to sell any lands at present. He said he would take a quitclaim deed for it. I told him that I did not want to sell upon any terms at present. He told Hale that there was some person living on the five leagues holding under I. H. Pearson or for Pearson's benefit. He did not tell Hale his name. You had better see Stewart about who the man is. I expect it may be Prewit, so you must see any person that is living on the land and know *how* they — holding under, and sue any person who don't or won't make any arrangements with you that is on the land. I think I will make some arrangement with Hale to pitch in with you and Hancock and prosecute the law cases fully and push my things through as soon as can be done, and you had better correspond fully with Hale; he will write to you about all that may be necessary at this time, and you and L. Mabrite must hunt up and get all the testimony that may be wanting in the I. H. Pearson and the other cases, and you must manage to get Warren Ables' man off the land in some way and write to Hancock also, and if Chambers and Flint wants any help you must give it to them. You must push my things through as fast as you can, and I will make such arrangements with you, Judge Hancock, and Hale as will be satisfactory to you, and I will do what is right by yours. I will leave here tomorrow for home, where I will stay to about the fir*d*t of March, and then go to Washington city, and I want you to write me fully about what you have done since I left you and what are the prospects of matters and things, and you must see Ruble and
see what he is going to do about his land, for, if he won't *to*
417 do something about it, the matter will have to be tried next
time, and send me on the papers about your account for services against the Indian Office, so I may see what I can do for you, and I will see about the claim as soon as I go on to Washington city. I send you a check on Sheppard, Shaw & Co. for 750 dollars, as I promised you I would do so. You will acknowledge the receipt

P. S.—Write me fully about all matters up there and what Wm. M. Wright says; also what Jos. M. Wright says.

I can't think of anything else I can write to you about at this time. Give my best respects to Mrs. Gurley and the children, and also to Judge Cranberry and Mrs. Cranberry and to all friends. Let me know how Major Flow is getting along with the squatters and if he has put them off.

Yours truly, EDW'D HANRICK.

N. B.—Mr. Hale will write you fully about Chambers' case and about the *memorandum* you handed me at Waco. I wrote to Jos. M. Wright that I should depend on him and you to manage things in Falls county west of the Brazos for getting up the testimony that will win our case and to get Warren off the land.

P. S.—I cannot get off today. I will leave here on Friday next. Write me soon.

Wednesday, 15th February.

No. 7. Filed Dec. 11, 1888.

J. H. FINKS, *Clerk.*

MOBILE, *Jan.* 24, 1861.

Sent to Edw'd J. M. Gurley, of Waco, Texas, a check of the Bank of Mobile on New Orleans for $500 to pay my taxes on lands in Falls Co., Texas, for the year 1860. He is my agent and attorney to attend to my land matters in Falls county.

AUSTIN, TEX., 23*d May*, 1860.

Mr. E. Hanrick.

DEAR SIR: Your kind letter of May 7th, enclosing a copy
118 of a letter of Hon. Howell Cobb, Sec'y of Treas'y, to you,
dated April 19th, 1860, in relation to the claim of Rapheal Aldope, has just come to hand. We, of course, have not at this point the authority necessary to enable us fully to examine the grounds on which the refusal is based. The only ground stated is that the proceeds have been distributed and one portion paid into the Treas'y and the other portion to the revenue officers. There is no justice in the position that the Gov't is not bound to remit because the officers have improperly appropriated the money of a citizen and illegally divided it among themselves, nor do we conceive that the position can be supported either by precedent or authority that a distribution among the revenue officers of their ill-gotten gains after the claimant has instituted his suit can at all affect his rights under the well-known and universally recognized maxim of the law, *pendente lite nihil innovetur.*

In this case a drunken collector abandons his post and confiscates without cause the property of an honest man, and in continuation of his drunken orgie divides out the property of Aldope among his subordinates (such we have been informed were the facts): the hot haste and gross negligence the court has found. If, however, it be the law that under such circumstances the Government

is powerless, it would be much better to repeal or modify the statute, as it now holds out continually the most glittering rewards before the eyes of the avaricious and unscrupulous. As to the power of the Sec'y of the Treas'y to remit even now the money paid over to the U. S., it seems clear it is in the hands of the Government, and the only case bearing on this point to which we have access
419 is the case of The United States *vs.* Morriss, 10 Wheat., 246,
where it was held that the power of remission continu*ted* until the actual receipt of the money arising from the forfeiture by the collector for distribution, and in that case the suit was brought after the distribution.

In commenting on this case Mr. Conkling, in the ed. of 1856 (enlarged) of his excellent treati*es*, p. 743, ch. 3, remarks: "It will be perceived, however, that this decision, in fixing the limits beyond which the power of remission can no longer be exerted, applies in terms only to the shares of the officers of the customs and not to the interest of the United States. The question may therefore, perhaps, still be considered as open for discussion whether, so far as this insterest is concerned, the Sec'y of the Treasury may not *ad*mit at a still later stage of the proceeding." This was written in 1856, and it seems that up to that date Mr. C. knew of no decision that prohibited the Sec'y of the Treas'y from exercising the power of remis-ion at any stage, and we feel confident that such a decision can only be supported by precedent and not by reason and justice. We do not know the precise date of the sale by the collector or when or in what manner the proceeds were distributed, but doubt not that if examined they will be found to be marked by the same disregard of personal property and the individual rights that has characterised every step in this matter. We believe the case in all its features to be one that ought strongly to commend itself to the department, and we trust that it may be re-examined. If, however, there is really no chance for it before the department, we will not trouble Congress with it, but rather let it remain among the archives of the department as a lasting monument of how easy it is
420 in a great Government like ours for a petty official to rob
and oppress a private citizen, and for that official to avoid disgorging his plunder by an appeal to the fact that the Government has heretofore suffered others to be plundered, and that because they and the official have divided the spoil that the citizen is remediless.

In regard to your land matters here, to which you make reference, we would say that (as you know) the Fed. ct. meets here in June next, and your cases may be called for trial; our relations to your cases have caused us no little embarrassment. We have no fixed fee and do not precisely understand our position. We have not the management of them, nor have we the control or custody of your titles and papers, and tho' we have had frequent correspondence with Mr. Hale, Mr. Gurley, and yourself about these matters, yet no satisfactory conclusion has been arrived at. We do trust that you will be fully impressed with the necessity of speedily settling this important matter, so that there need be no misunderstanding whatever between us as to our position. Mr. H., we presume, will make some arrangement as to your matters in the Fed. ct. here, as he still has the control of your title papers. We are under obligations to you for your efforts in behalf of the Aldope claim and will be pleased to hear from you.

Yours, etc., HANCOCK & WEST.

No. 13. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

421 WACO, TEXAS, *May* 31*st*, 1860.

Mr. Edward Hanrick.

DEAR SIR: I wrote you in my last that Alex. Green would not consent for me to take the depositions of witnesses here, but would require their personal attendance. I have failed to procure the attendance of some that are important. I find also from my correspondence with Mr. Hale that it — very doubtful whether he will attend court, and Judge Hancock writes in such a way that I am satisfied that he will not go into a trial of your case without a further understanding unless instructed to do so by Mr. Hale. Green has not been getting his side of the case ready and would oppose a trial. Under these facts I regret to say that with all my efforts I do not expect your case will be tried at this term, and I am more than ever convinced that you ought to come out after the adjournment of Congress or as soon as you can and make some definite arrangement with your att'ys. Judge Hancock and I, as matters now stand, are not authorized or don't feel authorized to do more than prepare the case for trial and aid and assist Mr. Hale, who is leading counsel, and we cannot tell when it will be convenient for him to attend court. I make this suggestion to you on account of Judge Hancock's dissatisfaction with his present position in the case and will explain fully when I see you.

Aguirrie's agent proposes to divide the league on Cow boyou or to take 50 cts. per acre for his claim. I have written to Mr. Hale and Judge Hancock for their advice, and now write to you to know that if in the event we think it best to make the compromise you are willing & also are you prepared to pay in money the 50 cts. per acre. The whole amount would be $2,214.00. It would be much the best, if we compromise, for you to pay the money, for the land is worth more to you than $1 per acre, as you have timber
422 convenient. When I hear from Mr. Hale and Hancock I will write you what I think is best to do.

Jim and Wm. Wright still contend for the Bosque and Manchaca surveys to be upon the La Serda, notwithstanding Jenkins. The surveyor says there is not any evidence of it in the woods, not even e-ough to put one upon inquiry or to raise any question.

Jim Wright says that he can prove all about the Ables title—how it was gotten up, etc. I think he has had some confidential conversation with Pearson. The play, I think, will be for a compromise of the Pearson league, and the testimony to defeat Ables' title will be forthcoming if you will give Pearson half his league by way of compromise. I am guessing at some of this, but we will see what we will see.

In regard to my business in Washington I appreciate very much your assistance, and hope you may be able to do something with it, and leave the matter entirely in your hands.

My kind regards to Lindsay.

Your friend truly, E. J. GURLEY.

No. 2. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

WACO, MONDAY, —— *27th*, 1860.

Edward Hanrick.

DEAR SIR: I started yesterday for Austin, intending to stay the first night at Jas. Wright's. I had gone but a few miles when I met a terrible thunder and rain storm, which drenched me through and through and raised all the little prairie creeks so that I could not proceed. I returned, thinking to make a fresh start this morning, but it rained all night, and is still pouring down, and I do not believe I shall be able to make the trip to the time you
423 requested. If it was to stop now it would be a day or two before I could get along on account of the waters, and even then the roads would be almost impassable on account of the mud. On this account I have thought it best to write to you. It may be that you will find there is no necessity for my being at Austin. So far as any arrangement you may wish to make with Judge Hancock and myself I assure you I shall be entirely satisfied with anything you and he may agree to. If, however, you want me there write to me by return mail and I will go immediately. Mrs. Gurley sends kind regards, and says you must stop with us while you stay in the country. She is depending upon this, and will be much disappointed if you do not. She says you must drive right here first place and let her get hold of your baggage and she will then feel that she has you secure. It is unnecessary for me to say that this arrangement pleases me, for you know it already. Come as soon as you can, and if you want me at Austin write; there is nothing to prevent my going except the waters, and in all probability this difficulty will be removed in a few days.

Your friend truly, E. J. GURLEY.

Endorsed, to wit: Edward J. Gurley. Aug. 27th, 1860. Rec'd Sept. 3rd, 1860. Respecting *of* making arrangements with Judge Hancock and Gurley. No. 5. Filed Dec. 11th, 1888. J. H. Finks, clerk.

GALVESTON, *Sept. 4th*, 1860.

DEAR SIR: I left Galveston at 8 o'clock on Monday a week
424 ago yesterday morning and arrived here on Sun- night at half past ten o'clock, nearly eight days on the way. Judge Hancock handed me your letter yesterday and contents noted. I noted what you say about coming and started and prevented by high water. There is no necessity for your coming over

here. I will make such arrangements with Judge Hancock that will be satisfactory for you both and myself. Mr. Hale will be up at Falls court, and it is best to try the cases at the Falls court if we can do so at next court. I have brought up all the papers that Hale had respecting all the lands, and if you want any papers that *is* here in the trial of the cases in Falls county write me and I will bring them with me to Waco. I will send you a letter which Hale wrote you, so you may see what he says about matters and things. Noting what you say about Mrs. Gurley's wishes I will see when I get to Waco, and if I stay there much time I will stop with you. Expect to stay here a week, as I am under the weather with two boils on my leg, and I got them hurt in the stage coming down from Mobile and coming up here in the stage, and I will stay a week here to try and get them well, or as well as I can before I leave here. I met with McKinney and Blocker in town today. They are well and families. I had about the longest trip I ever had coming up from Galveston with high waters. Let me hear from you on receipt of this in the care of Judge Hancock. Give my best respects to Mrs. Gurley and the children.

Yours truly, EDWARD HANRICK.

No. 6.

Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

GALVESTON, *Sept.* —, 1860.

John Hancock, Esq., Austin.

425 MY DEAR SIR: I think I promised in my last to repeat to you the substance of a letter written to you about three weeks, as Mr. Hanrick appears to intimate that the letter in question did not reach you. I stated rather more fully than I do now the reasons which induced me to desire you to undertake the chief management of the suits relating to Mr. H.'s lands in Williamson and Falls counties, except those suits which may be brought at this place or are now pending here. Your nearness to the scene of action, your knowledge of the facts attending the titles and controversies respecting them, and, permit me to say, your experience and ability, will give Mr. H. greater confidence in your management than he would have in any one else. With the aid of Mr. Gurley as to the lands more immediately in his neighborhood I presume you would find little difficulty in the cases, except what naturally arises from the pertenatious nature of the squatters. The legal questions, it strikes me, would offer no trouble if the controversies had not been imbittered by personal and perhaps party feeling, with which you are not connected. I trust, therefore, that Mr. Hanrick will be able to make with Mr. Gurley and yourself a satisfactory agreement as to the future prosecution or defence of the suits I have referred to. In that case I shall regard myself as relieved from the responsibility as counsel, remaining only as the friend of Mr. Hanrick, and willing to assist so far as I am able, consistently with other engagements. Mr. Hanrick stated to me that you

desired me to unite with yourself and Mr. Gurley in the labor and compensation. I should be happy to do so in case I could really be of any service with the qualification which I should be obliged to attach to any promise of that kind. Thus far I have endeavored to perform my duty as counsel for Mr. Hanrick, although, as you are aware, my efforts have been
426 impeded by the distance I have been from the (*locus in quo*) and the almost impossibility of attending the courts in that part of the country. Now, or rather after you have come to an understanding with Mr. H., my anxiety to see to his interest will be so much diminished that I can attend to my local business or other cases in which I am chiefly relied on with a clear conscience, and as the courts at Austin conflict with those here I can scarcely agree positively to be present at any or every term. There would be perhaps little trouble in my finding time to be absent for a fortnight during our terms, but I would not like to make a certain engagement to do so; in other words I must look to my domestic practice for my chief remuneration, and although I have been drawn to a distance in many cases by a desire to gratify old clients I don't want to do so more than I can help. If under these circumstances you think my association with you would be of any use say so frankly and I would engage to do what I could. The writ of possession in the Ufford and Dykes case it seems to me had better not be pressed until the injunction is dismissed as of course it will be at once on motion. The existence of the injunction would serve the squatters as a pretext for fore*ca*ble resistance, and it would be best to leave them no excuse. I should think it would be best to take actual possession of the land by some resolute agents or tenants who will engage to remain and hold possession under Mr. Hanrick; but to do so without any collision or as far as possible any dispute with the present occupants. You are however the best judge of the proper course. Judge Hughes has several letters from S. F. Austin to Williams and one from Vega to McKinney quite important if admissible as evidence. The interrogatories framed by me
427 relate to these. I will endeavor to obtain copies and send you. Among the papers which Mr. Hanrick carried up are several which throw much light incidentally on the history of the transaction. I have not yet definitely settled with Mr. Van Roeder. He does not seem very punctual and I have been told he was rather bad pay. I presume, however, it is ow*n*ing to the times. As he may send the money yet please forward me the printed transcripts with your notes or send them to me at fall court with your notes. It stands early on the docket, and I ought already to have had the brief under way as I have in my other cases. With my best remembrances to Mr. West,

Very truly yours, WM. G. HALE.

Endorsed: Wm. G. Hale. Sept. 20, '60. No answer. No. 21. Filed Dec. 11th, 1888. J. H. Finks, clerk.

GALVESTON, *Oct. 26th*, 1860.

Edward J. Gurley, Esq.

DEAR SIR: I arrived here on Wednesday from the up country. I did not find at home all the persons that I wanted to see. I saw some and think I got some information that will help us, I think, a good deal. When I arrived here I found yours of the 17th inst. and contents fully noted. I am pleased to hear that you settled your difficulty with Ham Johnson and that gang. You wrote to Hale and he showed me your letter. I was glad to hear*d* Dr. Johnson and John Blankenship come from Houston down on the boat to this place; they went next day to New Orleans. I notice what you say about the cedar. I am satisfied it is the best that I could do with it, for I did not make arrangements with Jackson about it. It all would be cut down and stolen, and from what Wm. Blocker told us, there is a great deal cut down by Jas. Wright or
428 some other per- that is lying on the ground. You had
better have it sawed up or something done with it or use it in some way. I wrote to all parties fully about it, and do with it as if it were your own and in my way, and tell Jackson he must take care of it as if it was his own. I send you a plat of the eleven league, at the Falls that was sent to me in 1833 by M. Williams with two other plats that I had that may be of some benefit to you. I have not heard anything of Frank Johnson yet. I will hunt him up in New Orleans, and as soon as I get on his trail I will write to you. I wrote Albert Jackson to see Rubles and tell him that unless he went to Austin this winter and closed up our matter that what had taken place between him and myself was at an end, and I think you had better see Gilbert Jackson to see Rubles, and if he will — a reasonable sum in cash would rather pay him and get clear of him, and he might live one or two years on the land until he could get a place to move to, and you can — Jackson that a part of the cedar is on the land, that he can have it upon good terms from me or you as from any person else, aud if he could get clear of Rubles it would be for his interest; I should rather get cl*ae*r of him. Wm. H. Parson and Mrs. Roberts is living in Grimes county, and I feel certain that I can get them clear for a very small sum if it is best to go when I come out next spring and I find that I have to come as soon as I can do so to see witnesses before we take their testimony. Enclosed I send you a list of names that I got from Andy Montgomery, and which I want you to see as soon as you can do so, and find out from them what they know about the surveys for Chambers, and write to Hale. After you see them let me know where Uclid Scott lives in California, as I want to write to some person to see him to find out about matters and things.
429 I had a letter from W. M. Wright stating that he had put a
tenant upon the eleven leagues of the La Serda, and writes that he thinks all the settlers on the outside leagues are willing to hold under leases. When you have the surveys made you must see them all, and make them hold for me or they must be sued. I have made arrangements with Hancock & West, Wm. G. Hale, and your-

self to take a hold and all of you work together. I thought it best to have Hale in the matter, for he knows all about the land and evidence; so you are all interested in the matter. When you had the memorandum I send you, you will see the names of persons to sue. I think we can defeat Chambers if we go to work hard. Andry Montgomery, I think, was disposed to tell me all he know about matters and things. I expect to leave here on Sunday for home, where I will stay until early in Dec. Let me hear from you after I get home if anything new turns up, and you will have a good deal to do this winter and spring, and you had better get all the testimony that you may want in the cases in Austin this winter. Judge Perry can prove for you about the power of the alcalde in Austin's colony in Austin, and Williams' upper colony, and there *is* some others up in the upper part of the country that can prove the same facts. I wrote to Allen — send you some names near you, who can prove this fact for you. I wrote you that Linn could prove it, but you had better get some other person. He thinks that the alcalde had the authority to act, but he did not live near the alcalde. You had better get Judge Perry or some other person with Linn to prove it. I thought you might find some information from the pamphlet sent you about land matters. I think I have said to you all that I think of at this time. Give my best respects to Mrs. Gurley and the children and Judge Granberry and Mrs. Granberry and to all friends.

430 Yours truly, EDWARD HANRICK.

No. 11. Filed Dec. 11, 1888.

J. H. FINKS, *Clerk.*

GALVESTON, *Feb.* Feb. 14, 1861.

E. J. Gurley, Esq., Waco.

DEAR SIR: I had intended to write to you before this, but illness and occupation both delayed me. I saw our old friend Mr. Hanrick at Washington last December, and he agreed fully to the contract as to fee, etc., and is to sign, seal, and deliver at Austin when he comes out. It is all understood, however, now, and may be considered as done. Owing to "secession" his suits, of course, in the U. S. courts are suspended, and it will probably be necessary to commence anew in our State courts. I write to Judge Hancock for his suggestions on that point, and hope you will think of it. In the division of labor between us you know I took the Galveston part of it, and I must ask you therefore to prepare for trial the cases in the dist. court of Falls county. I don't see well how they, I mean the Pearsons, can have two suits pending at the same time for the same land, one in the supreme court and one in the dist. court, do you? As to the Aguirrie suits for the one league, mustn't we prove the power of att'y and take testimony in Mexico and elsewhere? And ought it not to be done quickly so they can't catch us napping at next term? Nothing yet from or of F. W. Johnson. Have you heard anything? What is to be done about the surve*r*y of the Chambers tract? What would you suggest?

Yours truly, WM. G. HALE.

Endorsed: Wm. G. Hale. No. 15. Filed Dec. 11, 1888. J. H. Finks, clerk.

431 WACO, TEXAS, *June 17th*, 1861.

Uncle Ned.

DEAR SIR: I write you in deep affliction, announcing the death of my father and brother Rich'd F. Blocker. For three months past I have been with them night and day endeavoring, to the neglect of everything else, to administer to their comforts and necessities, and my own health has suffered from the fatigue and anxiety their sickness and death occasioned. I need make no apology under these circumstances to one of so kind and sympathetic a nature as you possess for not writing to you during that time. In regard to your Falls County taxes, I agree with you and Wright that they are double what they ought to be. The facts are these: I gave in the land at what I thought a fair valuation and under oath. The county court, without giving me any notice, reviewed the assessor's list and raised your taxes nearly double. Jim Wright happened to be there and told the court that you would take what I had given the land in at for it, but all this done no good. I called your attention to these facts and Mr. Hale's also at Marlin court last fall, and went with Mr. Hale and examined the proceedings of the county court. Mr. Hale's opinion was that there was no appeal from the decision of the county court. The reason we gave in the land in Falls county was that the law required all lands given in out of the county in which they lay to be assessed at the average value of lands in that county, and if we had given them in at Galveston they would have been assessed at the average of Falls County lands, which would have been about the same which the county court raised them to, but it goads me to think the county court should take the responsibility to raise upon the lands that I had given under oath, but they did the same with nearly everybody in the county. I have 432 not paid the taxes yet. Mr. Hale suggested that it might be to our advantage to let the land be sold. I have written to him about this and now await his answer. The amount due is $667.50. I had procured the amount in State scrip some time ago, scrip being about the only currency we have now, and under the act of the legislature this scrip was good in the payment of taxes, but under the act of the last call or adjourned session this was changed, and the assessor informs me that he cannot take the scrip, but he says he will take a draft upon New Orleans or Galveston. Under these circumstances, and there being no money at all in our county, I will have to rely upon you to get the money in New Orleans or to Mr. Hale at Galveston, to be paid so soon as we have determined the questions involved. I have made arrangements to spend next week in Falls county more for the effect than anything else, for the breaking up of the courts has brought everything to a stand-still, but it is the more important that our local agents should be active in the asserting of your rights and influencing the public sentement, etc. My opinion is that Wm. M. Wright's demands should be very moderate, and that under the present circumstances no more favors should be shown him than any other person desiring to settle upon your lands, and I will only temporized and delay him for the present. I think this would be your own plan if you were here.

Very truly, your obedient servant, E. J. GURLEY.

No. 3. Filed Dec. 11th, 1888.

433 MOBILE, *June* 16, 1861.

Edward J. Gurley, Esq.

DEAR SIR: Enclosed I send you $500 in a check of the Bank of Mobile on New Orleans to pay my taxes for 1860. I wrote you from Montgomery and sent you a copy of letter I rec'd from W. M. Wright about my taxes and other matters, and I expected to have heard from you before I left home in reply to my letter, but I heard nothing from you. You must attend to my taxes and not let the land be sold. When I got home last fall and before I went to Washington city I sent you a check for $450 and an order of E. J. Byrd for fifty dollars which I supposed would pay my taxes and other expenses. I am on my way to the Indian Ter., west of Arkansas, and from there I expect to go to Texas, on my way home. I don't know what time I may be at Waco, for I don't know how long I will be detained in the Nation, but I will get to Texas as soon as I can do so. My health has improved a good deal since I wrote you. I have been to Richmond since I wrote you and came by the way of Pensacola and stopped there a day and night on my way here. Give my best respects to Mrs. Gurley and the children.

Yours truly, EDWARD HANRICK.

No. 20. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk*.

434 WACO, TEXAS, *June 27th*, 1861.

Uncle Ned.

DEAR SIR: I find your matter in Falls county all in good condition. Our friend Ables has eked out; he sold his horses, and his tenants sold to Bob Moore the improvement, but Rud, who claims the Rector league, took possession and says Moore shan't go about the place. Rud recognizes your title, but is very bitter against Ables. I did not see Wm. Wright. Jim had not got back from ranging, but I learn has now returned. The tax-collector says your taxes must be paid by the first of Aug. or he will sell the lands, etc. We must be ready for him. I am using every effort to raise the money here, but it will not do to depend upon me. If you can send the money to Galveston it will be better than New Orleans. We have heavy crops and expect heavy immigrations. I have had a proposition for about $30,000 worth of my land, but no cash offered and I did not trade. Missourians and Kentuck*y*ans are bringing their negroes here, leaving their land unsold, and, of course, have no money to buy land; they are expecting to get it upon credit; in this they are mistaken; we prefer owning lands to having notes for the whole of the purchase-money. Persons coming here to buy lands must bring at least one-third of the purchase-money or they will not be able to get lands. My family are well; wife sends her love.

Yours truly, E. J. GURLEY.

No. 1. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk*.

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435 FORT SMITH, *July 7th*, 1861.

Edward J. Gurley, Esq.

DEAR SIR: I wrote you from Mobile and enclosed you a check for $500 on New Orleans to pay my taxes for lands in Falls county for 1860, and I want you to attend to it for me. I will leave here in a day or so for the Nation, where I may remain some two or three weeks and return here and will go from here to Texas if I don't have to go to Richmond during the session of Congress on some business. I will visit Texas this fall if alive and well. My leg is improving so that I am able to get along very well in traveling. I hope you all will keep well and you must attend to everything for me as well as you can about my land matters. Give my best respects to Mrs. Gurley and to all my friends in your place.

Yours truly, EDWARD HANRICK.

No. 9. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk*.

WACO, *Nov.* 30, 1861.

Mr. Edward Hanrick.

DEAR SIR: Your favor of the 27th of Oct. has just to hand and I hasten to answer it. I rec'd a letter from my brother which you mailed at Little Rock, and I was very much gratified, for it contained the first news ~~I had~~ of you for about three months. I had become uneasy about you, but as I had advertised you once before under similar circumstances I was determined to wait patiently this time until you turned up. The draft you sent me of $500 was captured off Galveston by the blockading fleet and I did not know that you had sent it until I rec'd your letter from
436 Ft. Smith. It was detained about two months and then
sent on. Most of the letters that came at the same time were broken open, but your letter with the draft had not been opened at all. I had some difficulty in using the draft in payment of your taxes, but finally made arrangements through Bartlett, who assumed the amount with the collector and took the draft. The reason I did not acknowledge the receipt of the draft was that you were in the Nation and I did not know your post office and thought it useless to write to Montgomery, as you write me you would return home

through Texas. There is nothing of interest about your lands. I wrote you, I believe, that I had got rid of Ables' possession. Ables came near being hung by the vigilance committee; out of 36 all but 4 voted for hanging him and they did not do it because the vote was not unanimous. The offence was that he hired some one to commit murder. Mr. Duty came up a few days ago and told me somebody was about to settle near him on your land, claiming under Duren. Duty said he told him if he did so I would make him leave as I had done Cowen Evans, but this did not seem to satisfy him, and I told Duty to tell him from me that if he attempted to settle there I would drive him off by force if I had to raise the whole neighborhood to do it, and I told Bill Blocker to see him and let him know that the neighborhood to a man would assist me. The fellow left and I don't think will come back. I shall be glad to see you when you come out and hope you will come as soon as you can and stay as long as you can. Federal court sits at Austin first Monday in January, and if you do not come before then that will be a good time to be here. I expect to go to Austin at that time. My family all well. My wife was as glad to hear from you as if you had been a near relation. She was much afraid some
437 harm had befallen you in the Nation. Write as soon as you reach home from Richmond and let me know chen I may expect you, so that I may govern myself accordingly. I expect if it had not been for your business I should have been in the army. I could have raised a regiment here last spring and strongly urded to do so and I could have procured a commission from Polk Walker, being an old acquaintance, but perhaps it was all for the best.

Yours truly, E. J. GURLEY.

No. 4. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

DOAKVILLE, CHOCTAW NATION, *Feb. 9th*, 1862.

Edward J. Gurley.

DEAR SIR: I arrived here on Thursday night last after a pretty hard trip of it. I will leave here in a few days for Ft. Gibson, and from there I will go to Texas as soon as I can do so, but I will have to go by the way of New Orleans, as I find I cannot get into Texas any other way. From what I can learn there is no stage from eastern Texas to your part of the State, but I must get there some way. I want you to attend and see what is best to be done about giving in my lands for the confederate taxes. You will have to do the best you can with them and do with them as if they were your own, and I want you to write to Mr. Hale about it and see what is best to be done about giving them in for the taxes—for the confederation taxes. I am satisfied that you will do what is right about it for me. Whatever arrangements you and Mr. Hale make about giving in my lands for the taxes will be satisfactory to me. I will get to
438 Texas as soon as I can do so and see what is the best we can do about matters and things. My health is pretty good.

Give my best respects to Mrs. Gurley and the children and to all friends.

Yours truly, EDWARD HANRICK.

No. 18. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

MONTGOMERY, *Dec.* 15, 1859.

Mr. Hancock, Esq.

DEAR SIR: I am in receipt of yours of the 2n- inst. and contents and for which I am much obliged to you, for I will leave about Sunday or Monday next for Galveston, where I will have to stay until early in Jan., and I don't expect to be in Austin until about the 10th to the 15th of January. I regret much that Judge Terrell is not in a situation to act in the case of the injunction. I will write you from Galveston as soon as I get there and Mr. Hale may also write you about what matters that may want attention in the U. S. *States* dist. court in January in Austin and I may want you to assist Gurley in some cases there in court if Hale cannot go up to court, and also will advise you from Galveston what may be necessary to be done in court. I expect to stay in Texas when I go out until early in Feb., as I have plenty of time to stay as long as I want. I want you to do anything that may be necessary to be done until I go out and when I go out I will make some arrangements about matters and things. Nothing of much interest here with us. Give my best respects to Judge Duval when you see him, Mr. West and Mr. Potter included. I send you a letter. Please hand to Mr. Gurley, who will be in Austin by the first of Jan.

Yours truly, EDWARD HANRICK.

No. 12. Filed Dec. 11th, 1888.

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439 WASHINGTON, *Dec.* 12*th*, '70.

E. J. Gurley, Esq., Waco.

DEAR SIR: Enclosed please find two copies of brief in Hanrick *vs.* Neely. I did not expect the case to come up at the adjourned term in Nov., but my old friend, the clerk, telegraphed me to come on, and I argued it just two weeks ago. The brief was written and printed the same day and was not so full as I could have wished, but I discussed the questions fully in the oral argument. No one opposed. Today the court reversed the judgement on my second point without reservation.

On the new trial in June you will only have to introduce the same document up to the deed to Hanrick. Of course you have still the defence to meet; but will not the moral effect of this decision enable you to settle if it is pushed? Hanrick *vs.* Barton has reached here; record seems all right; have not examined as to merits. Instead of bond send $200 to clerk of U. S. Supreme Court, D. W. Middleton, by post-office order or draft as a deposit. I telegraphed Mr. Hanrick at Waco today.

Yours, W. G. HALE.

No. —.

P. S.—Jan., 1871.—I detained this letter for a copy of the opinion, which is just rec'd. You wil- notice it follows the brief pretty closely, but is coincident with my oral argument. Can you not upon this settle the litigation on favorable terms? If not, it will only be a little more delay, as we will win in the end. Don't fail (if you have not) to send the 200 to the clerk in the Barton case. I will send you the mandate in the Neely case as soon as possible.

No. 19. Filed Dec. 11th, 1888.

J. H. FINKS, *Clerk.*

440 In District Court, Falls County, Texas, Spring Term, 1880.

NICHOLAS HANRICK
vs.
J. V. EUBANKS.

To the Hon. L. C. Alexander, judge of said court:

Your petitioner, Nicholas Hanrick, hereinafter styled plaintiff, complaining of J. V. Eubanks, hereinafter styled defendant, would respectfully represent that he resides in the city of New York, county of New York, State of New York, and that said defendant resides in the county of Falls, State of Texas.

That heretofore, to wit, on the — day of ——, A. D. 1865, one Edward Hanrick died intestate and without issue, he never having married, in the county of Montgomery, State of Alabama.

That he left surviving him as next of kin and sole heirs two brothers, named respectively John and James Hanrick; one sister, named Elizabeth O'Brien, and a nephew, named Edward G. Hanrick, he being the only child of one Philip Hanrick, who was another brother of the said Edward Hanrick, deceased, and who died in the year A. D. 1852.

That the said Elizabeth O'Brien resides in the county of Wexford, Ireland, and is and ever hath been an alien to the United States and a subject of Great Britain.

That the said John Hanrick died intestate and without issue, he never having married, in the year A. D. 1870 in the county of Wexford, Ireland, he also having ever been an alien to the United States and a subject of Great Britain.

That the said James Hanrick died intestate in said county of Wexford in the year A. D. 1875, he also ever having been an alien to the United States and a subject of Great Britain.

That the said James Hanrick left surviving him as his next of kin and sole heirs four daughters, to wit, Catherine O'Neill, 441 Elizabeth Clare, Annie, otherwise Honora, Hanrick, and Ellen Hanrick; also four grandchildren, the children of a deceased daughter, and named respectively Mary, Bridget, Elizabeth, and Robert Whelan, and also one son, named Nicholas Hanrick, who is the plaintiff in this suit.

That the said Catherine O'Neill, Elizabeth Clare, and the said four grandchildren reside in the county of Wexford, Ireland, and are aliens to the United States and subjects of Great Britain.

That the said Ellen Hanrick and the said Annie, otherwise Honora, Hanrick and the said Nicholas Hanrick reside in the city of New York, county of New York, and State of New York.

That the said Nicholas Hanrick emigrated to the United States from Ireland in the year A. D. 1851, and became a naturalized citizen of the United States in the year A. D. 1864.

That the said Edward G. Hanrick resides in Falls county, Texas, and that he and the said Nicholas Hanrick were the only relatives of the said Edward Hanrick, deceased, who were citizens of the United States at the time of the said Edward Hanrick's death.

That the said Edward Hanrick, deceased, died seized and possessed of the following-described tract of land, owning the same in fee simple.

That said tract of land lies and is situated in the county of Falls, State of Texas, and is known as the Pedro Zarza five-league grant, the same lying in two adjoining surveys, the first of said surveys containing four leagues and being described by metes and bounds as follows, to wit: Beginning at the lower corner of a survey in the name of Ignacio Galinda on the right bank of the Brazos river—

Thence south 62 west, following the lower line of said survey, 19,330 vs. to the second corner of this tract;

Thence S. 28 E. 5,000 vs. to the third corner;

442 Thence N. 62 E. 21,730 vrs. to the Brazos river for the fourth corner;

Thence up the river, with its meanders, to the place of beginning.

The second of said surveys containing one league of land and beginning at the west or northwest corner of the survey of Juan Acosta—

Thence S. 62 W. 10,000 vs.;

Thence S. 28 E. 25,000 vs.;

Thence N. 62 E. 10,000 vs.;

Thence N. 28 W. to place of beginning.

Your petitioner further represents that all debts and claims against the estate of the said Edward Hanrick, if any ever existed, have long since been paid off and discharged, and that his estate and said above-described tracts of land *has* never been partitioned among the heirs of the said Edward Hanrick, deceased, and that said hereinbefore-described tracts of land *is* reasonably worth the sum of one hundred thousand dollars.

That under and by virtue of the provisions of a general public statutory law enacted in the Kingdom of Great Britain on the — day of ——, 1870, and which hath ever since — and still is in full force and effect in said kingdom, all the rights of natural-born subjects of said kingdom, both in and to the acquisition, taking, holding, and disposition of real and personal property of every description situated within said kingdom, are expressly given to and conferred upon aliens, and by virtue of said statutory provision a title to real and personal property of every description within said kingdom may be derived through, from, or in succession to a citizen of the United States in the same manner in all respects as through, from, or in succession to a natural-born subject of said kingdom.

443 Your petitioner further represents that the said James and John Hanrick never alienated or otherwise disposed of their undivided interest in the estate of the said Edward Hanrick and in the lands hereinbefore described, which they may have inherited by virtue of the facts herein stated, but they died seized and possessed of said undivided interests.

Your petitioner further represents that by virtue of the relationship of the said Nicholas Hanrick, plaintiff, as herein shown, to the said Edward Hanrick, deceased, and by virtue of the facts hereinbefore stated, he, the said plaintiff, is entitled to and is vested with an undivided interest in and to the estate of the said Edward Hanrick, deceased, and in and to said tracts of land hereinbefore described, to wit, an*d* undivided one-half interest in and to the same.

That on the 1st day of Jan., 1878, said plaintiff was seized and possessed *of* in fee simple of said undivided interest in and to said tracts of land hereinbefore described and in possession of the same. and that on the day and year last aforesaid the said defendant, J. V. Eubanks, unlawfully entered in & upon said premises and ejected plaintiffs and took possession of the following-described tract of land, the same being situated upon and being a portion of the said two surveys hereinbefore described as follows, to wit: Beginning at the N. W. corner of a tract occupied by S. Hyden, a stake, from which an elm tree 4 in. dia. bears south 46 east 6 vs., marked X, thence S. 28 east 1,000 vs. to stake in prairie; thence S. 62 W. 564 varas to stake for corner, from which a cedar in run of branch bears S. 85 E. about 16 vs.; thence north 28 west 1,000 vs. to corner; thence N. 62 east 564 vs. to beginning, the same containing one hundred acres and being reasonably worth the sum of five thousand dollars; that said defendant has ever since said day

444 last named and does now hold and keep exclusive possession thereof, claiming to be the sole owner in fee of the same, and unlawfully withholds from plaintiff the possession of the same or any portion thereof, to plaintiff's damage five hundred dollars.

Wherefore your petitioner prays that the said defendant be cited, as the law directs, to answer this petition.

That on final hearing plaintiff have judgment against the defendant for the restitution of said premises and for damages and costs of suit and for such other relief as plaintiff may be entitled to, and that a writ of possession issue, and that he, plaintiff, be allowed to hold possession of the entire tracts of said one hundred acres for the benefit of himself and all parties who are interested as heirs or otherwise in the estate of the said Edward Hanrick, deceased, until the final partition of the said estate of the said Edward Hanrick, deceased.

And your petitioner will ever pray, etc.

W. C. BELCHER AND H. F. RING,
Att'ys for Pl'ff.

Endorsed, to wit: Nicholas Hanrick *vs.* J. V. Eubanks. This action is brought as well to try title as for damages. Filed Jan'y 14th, '80. J. Scruggs, cl'k D. C., F. C. Filed Dec. 11, 1888. J. H. Finks, clerk.

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NICHOLAS HANRICK }
vs. }
J. V. EUBANKS. }

Comes def't, and, excepting to the petition of pl'ff herein filed, says the allegations therein contained are not sufficient in law and show no right of action in pl'ff, and of this he prays judgment.

And, answering said petition, this def't denies all and singular the allegations therein contained and puts himself upon the country.

And, defending the worngs, injuries, and trespasses charged in said petition, this def't says that he is not guilty as therein charged against him and puts himself upon the country.

GOODRICH & CLARKSON,
Att'ys for Def't.

And, further, he says that he holds and owns the tract of land in his occupation described in the field-notes marked Exhibit X, hereto attached, by title derived from E. G. Hanrick, who resides in Falls county, by deed with covenants of general warranty from him, and he prays that the said E. G. Hanrick be required to appear and defend said title as by his covenant he is bound.

GOODRICH & CLARKSON, *Att'ys.*

Endorsed, to wit: No. 1783. #2. Eq. Nicholas Hanrick *vs.* J. V. Eubank. Answer. Filed Feb'y 20, '80. J. Scruggs, D. C., F. C. M. H. Cuury, dep'y. Filed Dec. 11, 1888. J. H. Finks, clerk.

446 In Dist. Court Falls County.

NICHOLAS HANRICK }
vs. } 1783.
J. V. EUBANKS. }

Comes E. G. Hanrick, who resides in Falls county, and prays that he may be admitted to make defence in above suit as the warrantor and defender of the title under which the def't Eubanks claims, and being admitted he says:

1st. That pl'ff's petition herein filed is not sufficient in law to entitle him to recover, and of this he prays judgment.

2nd. The said petition does not show any right claimed or demand by virtue of the "general public statutory law" enacted in the Kingdom of Great Britain on the — day of ——, 1870, and def't moves that the allegation in said petition referring to the same be struck out.

3rd. It appears from said petition that the ancestor of pl'ff, through whom he claims from the said Edward Hanrick, deceased, was at the time of descent an alien and not entitled to inherit by our law.

4th. It appears from said petition that more than (9) nine years have elapsed since descent was cast, and this def't pleads the same in bar. Wherefore he prays judgment, &c.

GOODRICH & CLARKSON, *Att'ys.*

And, further defending the allegations in said petition contained, this defendant denies all and singular the said allegations and demands proof.

And, further defending the wrongs, injuries, and trespasses charged in said petition, this def't for himself and his said codefendant, Eubanks, says they are not guilty as therein charged, and put themselves upon the country.

GOODRICH & CLARKSON, *Att'ys.*

Filed Dec. 11, 1888.

J. H. FINKS, *Clerk.*

447 NICHOLAS HANRICK *vs.* J. V. EUBANKS. } 1783.

This cause coming on to be heard and the parties plaintiff and defendant having announced themselves ready for trial, thereupon came on to be heard the said defendant's demurrer and exceptions to said plaintiff's petition, and the court being of opinion that said petition is insufficient and shows no right in the plaintiff, because said petition shows that a portion of said plaintiffs are now and were at the death of Edward Hanrick, the intestate from whom the plaintiff claims, aliens, and the others of said plaintiffs claim title from said deceased through a living ancestor, who was an alien—it is therefore considered by the court that said demurrer and exceptions be sustained, and, said plaintiff declining to amend, it is ordered and adjudged that said suit be dismissed, and that the defendant go hence without day, and that he have and recover of and from the plaintiffs all costs of suit in this behalf incurred for which execution may issue. It is further ordered that execution issue for use of officers of court against each party respectively for the costs by him in this behalf incurred.

(Then follows certificate of clerk of State court certifying that above is a true copy.)

448 In Circuit Court of the United States for the Northern District of Texas, at Waco.

ELIZA M. O'BRIEN *et al.* *vs.* EDWARD G. HANRICK. } No. 14.

And now come plaintiffs in the above-entitled cause and with leave of the court first had and obtained file this their first supplemental petition, and excepting to said so-styled "motion for leave to intervene" and said so-styled "answer," respectively filed by the said John B. Sargent and Wharton Branch, say the same are insufficient in law for the following reasons, to wit:

1st. Because the same presents no cause of action against plaintiffs.

2nd. Because the same presents no cause of action against defendants, and which said exceptions plaintiffs pray judgment of the court.

And, answering said pleadings further, plaintiffs deny all and singular the allegations in said so-styled "answer" filed by the said Sargent and Branch, except wherein the truth of same is hereinafter expressly admitted, and call for strict proof of said allegations.

And for further answer plaintiffs say that said conveyances to said Branch and Sargent which were executed by virtue of said power of attorney are null and void because the consideration- for which the same were executed were unauthorized by the terms of said power of attorney and because the execution of the same *were* secured by fraud and artifice practiced by the said Branch and Sargent on the said O'Brien and his said principals.

SEC. 1. And answering further plaintiffs say that on to wit: the — day of ——, 1870, the said Eliza O'Brien, of Ireland and the said John and James Hanrick executed and delivered to said Philip O'Brien said power of attorney, then making the said Philip their true and lawful agent and attorney-in-fact he being therein 449 authorized and empowered among other things to institute all necessary legal proceedings against the said Edward G. Hanrick and all other persons unlawfully claiming an interest in said lands against his principals, and in their names and for their use and benefit to sell and convey their said interest in said lands.

SEC. 2. That at the time of the execution of said power the said Edward G. Hanrick was the only heir of the said deceased Edward residing in the State of Texas, and that he was then holding out and representing to the world at large that there were no heirs or parties entitled to an interest in said estate besides himself: and he did then deny, and has continuously therefrom, down to the present time, denied the right of all other heirs of the said deceased Edward to participate in the enjoyment of the latter's estate, or any portion thereof.

SEC. 3. That during the year 1877 and the early part of the year 1878 the said Philip O'Brien he residing then in Boston, Mass., was substantially informed by letters written by the defendant Wharton Branch, the latter being an attorney and counsellor at law in the city of Galveston, that he, the said Branch, had been associated with one Wm. G. Hale, deceased, in the prosecution of suits in behalf of said deceased Edward during the latter's lifetime against numerous parties claiming, under adverse title, portions of the lands described in said Exhibit A, hereto attached and made a part hereof, the said Wm. G. Hale being the deceased Edward's trusted friend and life-long legal adviser, and that he the said Branch, had succeeded on the death of the said Hale to the latter's legal business, in great part, and that for this reason, he, Branch, felt it to be his duty to look up the heirs of the said deceased Edward and inform them of their legal rights in and to said estate; that he, 450 Branch had in his possession most of the papers of the said Hale, including numerous memoranda made by the latter of points of law and fact relating to said estate, and that on account of these peculiar advantages, and of his special knowledge of the facts of the case, and of the laws appertaining thereto, he was "free to say" that he could serve the said Philip in the premises more effectually than any one else. And the said Wharton Branch, being informed that the said Philip and his said principals, on account of their poverty, were unable to institute legal proceedings for the establishment of their interest in said estate, did further state substantially in said correspondence that if the said Philip would convey to him an interest in said lands he, the said Branch, would raise the money with which to institute and prosecute all necessary legal proceedings in relation thereto, and did further state that he would also, after the execution of said conveyances advance and extend to said Philip a loan, or loans of money, for the said Philip's personal use and benefit; and he, Branch, did earnestly and repeatedly request the latter, in said correspondence, to come to the city of Galveston without delay and see him, Branch, and did promise and agree that if he would execute such said conveyances and send the same to him he would immediately remit to him, Philip, $250 to pay his, Philip's expenses to Galveston; and did further earnestly exhort the said Philip to take immediate steps for the recovery of said lands, and did represent that there was a pressing necessity for such immediate action on his part, for that a considerable portion of the lands appertaining to said estate were going to waste for want of attention, and that a decree adverse to the estate of the said deceased Edward had been very recently 451 rendered in the United States Supreme Court, which, if not at once attended to in behalf of the non-resident heirs of Edward Hanrick, deceased, would result in the loss to them of their interest in the entire La Serda grant described in said Exhibit A.

SEC. 4. That in the early part of the year 1878 or thereabouts, the said Philip showed the said correspondence to the defendant John B. Sargent, of the city of Boston Mass., and the latter on learning of the inability of said non-resident heirs to prosecute their claim to an interest in said lands on account of poverty, proposed to become interested in the matter himself, and to assist the said Philip pecuniarily and otherwise in the establishment of the said rights of said non-resident heirs, in consideration of the said Philip giving him Sargent an interest in said lands; and did also offer to pay the said Phil*l*ip's expenses to Galveston and to accompany him there in accordance with Branch's said request.

SEC. 5. And it was thereupon agreed by and between the said Philip O'Brien, John B. Sargent and the defendant William Jenkins, that the three following-described conveyances should be executed.

First. That the said Eliza O'Brien of Ireland by her agent the said Philip, should convey to the said Jenkins all her interest in said estate and lands in Texas.

Second. The said Jenkins should then immediately convey to the said Eliza M. O'Brien wife of said Philip all the interest in said estate and lands acquired by him, the said Jenkins by virtue of the conveyances referred to next above.

Third. The said Eliza M. O'Brien wife of said Philip should then convey to the defendant Sargent one-half of the undivided interest in said lands acquir*r*ed by her by virtue of said conveyances referred to next above.

It was also then and there agreed by said parties that the
452 first and second of said conveyances should be without good
good or valuable consideration and that the consideration
of the last-named of the same to wit: said conveyance to Sargent should be an agreement on the part of said Sargent to furnish all the money necessary for establishing by legal proceedings the interest of the said Eliza M. O'Brien in and to said land and also to furnish board and lodgings for the said Philip as agent as aforesaid, did, on the 1st day of February A. D. 1878, execute and deliver to the said Jenkins the instrument of conveyance described substantially in Exhibit O, hereto attached and made a part of this petition wherein in consideration apparently of the sum of one dollar and other valuable considerations, he conveyed to him, Jenkins all the interest of his principal the said Eliza O'Brien of Ireland in and to said estate and lands and on or about the same day also the said Jenkins conveyed to the said Eliza M. O'Brien wife of the said Philip O'Brien by deed of conveyance on its face apparently for valuable considerations all the interest in said estate and lands conveyed to him by the said Eliza O'Brien of Ireland by her agent the said Philip; and said Eliza M. O'Brien wife of said Phil*l*ip did also on or about said last-named day convey to the said Sargent by deed of conveyance on its face purporting to be in consideration of valuable considerations one-half of the undivided interest in said estate and lands which she had acquired by virtue of the conveyance referred to next above the consideration of the said conveyance to the said Sargent being the promise then and there made by him that he would advance all the money necessary for establishing in the courts of the country the legal rights of the said Eliza in and to said lands and pay all expenses incidental thereto including all attorneys' fees and costs of court; and also that he would pending said anticipated litigation give the said Philip and his wife a home
in his house free of charge there being in truth and fact no
453 consideration in money either given or promised any of the
parties to said three conveyances referred to next above or
any other consideration than that next above mentioned.

Sec. 7. And accordingly soon thereafter the said Philip and Sargent for the purpose of carrying out said agreement referred to next above visited the said Branch in the city of Galveston Texas. That on their arrival there the said Branch informed them that said apparent conveyance from the said Eliza O'Brien of Ireland by her agent the said Philip to the said Jenkins was void for the reason that the same was unauthorized by the terms of said power of att'y which representations were relied upon and acquiesced in by the said Philip and Sargent and it was thereupon understood and agreed upon by the said Philip and the said Sargent and the said Branch that the contract made with the said Sargent referred to next above was void and should be abandoned and that a new contract between the said Eliza O'Brien of Ireland by her agent the said Philip, and the said Branch and Sargent should then and there be entered into for the purpose of recovering said interest in said lands which was accordingly done as hereinafter shown and the said Branch then and there suggested that in order to avoid any embarrassment which might possibly subsequently arise on account of the execution of said three instruments of conveyance referred to next above that the same should be marked cancelled, in which suggestion the said Philip and Sargent acquies-ed and the same were then and there marked cancelled and considered by the said Philip and Sargent and Branch null and void and declared by them of no force or effect.

SEC. 8. And the said Philip then and there believing all of said representations on the part of Branch as hereinbefore detailed to be true and relying on same and relying particularly on said representations in regard to his having been an associate counsel 454 with the said Hale in said suits and of his having succeeded to the greater part of said Hale's legal business, and having thus been induced to repose great confidence in the integrity and ability of the said Branch and for the reason above stated actually reposing such confidence in him the said Philip did rely without suspicion on the advice of the said Branch then and there given him in regard to the form and terms of the said contract hereinafter shown to have been then and there entered into the said Branch then and there professing to act and in fact acting as the legal and confidential adviser of the said Philip and his principal in the premises.

SEC. 9. And accordingly the said Branch and Sargent then and there promised the said O'Brien that if he would execute in their favor the instruments copies of which are hereto in substance attached and marked respectively Exhibits X and Y and made a part of this petition that they the said Branch and Sargent would themselves advance all the money necessary for paying costs of court, lawyer's fees and all incidental expenses connected with the establishment of the said Eliza O'Brien's title and interest in said lands. And the said John B. Sargent then and there and before the signing of said instruments specially took it upon himself and promised as his share of the performance of said agreement that he individually in behalf of the said Eliza O'Brien of Ireland or in behalf of any person to whom she might assign her interest would advance all the money necessary for the purpose of instituting and carrying on said legal proceedings from time to time as the same should be required of all of which promises on the part of the said Sargent the said Branch had full knowledge and in which he then and there acquies-ed and the said Sargent did also then and there promise in addition that he would board the said O'Brien and his

wife at his the said Sargent's house in Boston, or provide for
455 them suitable board pending said anticipated litigation without reimbursement, until the termination of the same of which promise also the said Branch was then and there fully informed and in which he acquies-ed.

SEC. 10. And the said Branch then and there, and before the signing of said instruments, took it specially upon himself and promised as his share of said agreement that he individually would give to the anticipated legal proceedings his personal legal services and would at his own expense employ other counsel to assist him in the same and that he would immediately on the signing of said instruments take all necessary legal steps against the said Edward G. Hanrick and other essential parties for the purpose of establishing the right and title of the said Eliza in and to the said lands for *the* benefit or for the benefit of any person to whom she might assign her interest.

SEC. 11. And for the purpose of more equitably adjusting between themselves Branch and Sargent the burden of said considerations to be borne by each, respectively, the said Sargent did, then and there, and at the time of signing said instruments, described in said Exhibits X and Y, execute in favor of the said Branch and deliver to him the instrument, a copy of which in substance is set forth in Exhibit W, hereto attached and made a part of this petition wherein the said Sargent conveyed to the said Branch one-half of the undivided interest in said estate, apparently conveyed to him by the said Philip in said instrument, described in said Exhibit X, the only consideration of said deed from Sargent to Branch being, as before stated, the agreement on the part of Branch to furnish, at his own expense, the necessary legal counsel.

SEC. 12. And the said Branch did, then and there, and before, and at the time of the signing of said three instruments desc-ibed in said Exhibits W, X and Y, represent unto the said Philip that he was perfectly familiar with the titles of the lands appertaining
456 to said estate, and of the condition and value of the same; and that all of said lands were then in litigation, and had been in litigation continuously from and anterior to the death of the said Edward Hanrick, down to the time of signing said instruments in favor of Branch and Sargent, and that at time to wit; the time last referred to, no portion of said estate of any considerable extent was free from litigation all the titles to the same including the lands described in said Exhibit A, of which the said Edward, deceased, died seized being of doubtful validity and all being then at that very time seriously contested in the courts of the country by adverse claimants thereto. And as a predicate in support of the apparent truthfulness of these representations in regard to the condition of the titles to said lands the said Branch did theretofore to wit, on the — day of — A. D. 1877, write to J. D. McClelland Esq. of New York—he, McClelland then being said Philip's legal adviser—stating that he would buy out the interest of the non-resident heirs of Edward Hanrick deceased including that of the said Eliza of Ireland if they could satisfactorily establish

their relationship to the said deceased and that afterwards to wit, on the — day of — A. D. 1877, the said Branch again wrote to the said McClelland stating that since he had offered to buy out said heirs a certain adverse decision rendered against said estate by which the eleven leagues of land granted to La Serda and described in Exhibit A had been lost to the estate had determined him against so doing, but that he was still willing to "law it out" for them so long as there was "a plank left to stand on," both of which said letters were shown the said Philip shortly after the receipt of the same; and thus the said Branch did represent unto said Philip that on account of the doubtful validity of the titles in Edward Hanrick deceased as well as the doubt and difficulty of establishing the right and title of the said Eliza O'Brien in 457 and to the same a conveyance of an undivided three-fourths of her said interest in said estate was not, under the circumstances an excessive or inequitable consideration.

Sec. 13. And the said Wharton Branch did also then and there represent the necessity of taking immediate action in the matter of said legal proceedings, there being according to his representations great danger of the said Edward G. Hanrick selling off the lands of said estate at probate sale and thus placing the same beyond the reach of said non-resident heirs.

Sec. 14. And said Wharton Branch did then and there further represent and advise that he, the said Philip, was fully authorized by the terms of the said power of attorney, to execute conveyances transferring his principal's interest in said lands for the considerations hereinbefore shown to have been promised by the said Wharton Branch in reference to said instrument described in Exhibit- X and Y and did professionally advise said Philip to this effect.

Sec. 15. All of which representations hereinbefore shown to have been made then and there and previously thereto by the said Branch to the said Philip in reference to the matters hereinbefore set forth, the said Sargent was fully informed, and in which he acquies-ed and he Sargent, did join the said Branch in advising and persuading the said Philip to execute the said conveyances for the purposes and considerations aforesaid, and did also, then and there join the said Branch in urging him to act in the said premises immediately and without further delay or investigation, on account of the losses which such delay might occasion, according to Branch's representations.

Sec. 16. And accordingly the said Philip O'Brien, then and there believing all of said representations made by Branch to be true, and relying on the truthfulness of the same, and having no knowledge to the contrary, and relying on the good faith of the 458 said Branch and Sargent toward him and his principals, they, Branch and Sargent, then and there professing to act and, in fact, acting as the agents and confidential advisers, of the said Philip and of the said Eliza, of Ireland, the said Branch, then and there, with the knowledge and acquies-ence of the said Sargent, professing to be and in fact, being the legal advisers of the said Philip, the latter expressed a willingness, in consideration of said promises made by Branch and Sargent to sign and acknowledge said instrument set forth in said Exhibits X and Y, provided the same should not take effect as deeds, or be recorded, or otherwise used as such, until the said Branch and Sargent had evinced a disposition to comply in good faith with their said promises by the institution of said legal proceedings and the vigorous prosecution of the same; and thereupon the said Branch proposed that the said Philip should sign and acknowledge said instruments and place them in his, Branch's, hands with the understanding that they should not be recorded or take effect as deeds, or be in any way used as such, until the said Sargent should remit to him, Branch, money enough to institute all necessary suits or other legal proceedings against the said Edward G. Hanrick and all other necessary parties, nor until such suits or legal proceedings were actually instituted, the said Branch, then and there, agreeing that if the said Philip would do so he, Branch, would not record said deeds, or permit the same to be recorded, or make or permit to be made, any use of the same as deeds, till said Sargent should send him, Branch, money enough to institute and vigorously prosecute said legal proceedings, nor until the same should be in fact instituted and under legal headway. The said Branch then and there agreeing with and representing to the said Philip that said instruments should, and would have no effect as deeds until the said Sargent should remit said money as aforesaid 459 and said legal proceedings should be instituted, of which representations and promises on the part of Branch the said Sargent was fully informed and in which he joined and consented; nor did the said Branch inform the said Philip that the instrument which he proposed to sign in his, Branch's, favor to be deposited with some other person than himself, in order to have the effect only of an escrow, but being, then and there, the said Philip's confidential and legal adviser, he, the said Branch, represented to the former and induced him to believe, and he actually did then and there believe, that said instruments would have no effect as deeds, or vest any title in either Branch or Sargent until said considerations were fulfilled; and so the said Philip did on or about the 15th day of February 1878, sign and acknowledge said instrument and place them in Branch's hands for the purposes aforesaid on said representations. Nor was said instrument in favor of Sargent, referred to next above, ever delivered by the said Philip to Sargent, nor did he, the said Philip, ever authorize any one to deliver the same to Sargent, or to place the same on record.

SEC. 17. And all of said three instruments described in said Exhibits W, X and Y were drawn up and were signed by the said Philip and Sargent, respectively, at the same time and place, and did in fact constitute one and the same transaction, and were intended and supposed by the said Philip to constitute one and the same contract, to wit: a contract between himself as the agent of Eliza O'Brien on the one hand and Branch and Sargent on the other hand; it being his intention that the said Branch and Sargent should be jointly bound to carry out the entire agreements,

which, as between themselves each had respectively agreed to execute as aforesaid. The making of the three apparent deeds instead of one instrument embracing all the terms of said contract having been suggested, then and there by the said Branch, said in-
460 strument then and there having been actually drafted by him, the said Branch, then and there professing to act and in fact acting as the legal counsellor and confidential adviser of the said Philip and as his principal, in relation to the subject-matter of said contract and the said Sargent also then and there acting in said premises as their agent and confidential adviser. And the said Sargent and Branch were then and there fully informed of the fact the same being in truth a fact that the said Philip O'Brien and his principals were utterly unable on account of poverty, to furnish any money necessary to carry on said litigation and that they themselves the said Branch and Sargent or either of them must furnish the same; and it was then and there fully understood and agreed upon and consented to and acquiesced in jointly by the said Sargent and Branch and between them and the said O'Brien that said legal proceedings were to be vigorously prosecuted without delay, and that under no circumstances was the said Philip O'Brien or his principals to be called upon to furnish any portion of the expenses incidental, thereto, and that this was the principal consideration which moved the said Philip, agent as aforesaid, to act in said premises.

SEC. 18. Nor was any money ever paid, or promised, to the said Philip or to his principal as the consideration, or any part of the same, for which said inst-uments were signed and acknowledged and delivered to Branch as aforesaid; but said contract was entered into without any money being actually paid, or promised by either of the parties to the same as the consideration or part of the consideration thereof.

SEC. 19. That at the time of signing said three instruments set forth in said Exhibits W, X, and Y, the said John and James Hanrick were dead, as hereinbefore stated, of which fact the said Branch and Sargent were fully informed, as well of the fact which was a fact, that a considerable portion of the lands appertaining to
461 said estate was then in litigation, the titles to a portion of the same of which the said Edward deceased, died seized, being of doubtful validity; but said Branch, with the knowledge and consent of Sargent, represented to said Philip, that, in order for him to convey that portion of his principal's undivided interests, which he did in fact, intend to convey to them, to wit, an undivided three-fourths interest in, and to, the undivided interest in said estate of which she, the said Eliza M. O'Brien, was seized when she executed said power of attorney it was proper and necessary that he, Philip, should execute said instruments, in the names of all of said principals, and apparently warrant the title therein apparently conveyed, in the manner and by the use of the language therein used, and the said Phili*l*p, relying on the representation of the said Branch, and reposing full confidence in his good faith as a lawyer, did assent to the use of the language therein used in regard to said

warranty, though the said Branch and the said Sargent knew well at the time, that the said Philip did not intend to bind himself personally, or the said Eliza O'Brien further, than the conveyances of three-fourths of the interest in said estate, which she had at the time of the execution of said power, and that he relied wholly upon them to properly express in said instruments, his said intention in this particular.

SEC. 20. That the said Eliza O'Brien, of Ireland, never did, in any manner, either by word or act, concur in, or ratify said conveyances by Philip to the said Branch and Sargent, but on the contrary she wholly ignored the same, and did on the — day of May, 1878, executed said conveyances to the said Eliza M. O'Brien, without reference, whatever, to the said pretended conveyances to Branch 462 and Sargent, they both being immediately after informed of the execution of the same, to wit, within sixty days thereafter.

And plaintiffs say that the said conveyances to Branch and Sargent were and are absolutely void because the same were executed for consideration wholly unwarranted by the terms of said power of att'y.

SEC. 21. And should your honor be of the opinion that said apparent conveyances to Branch and Sargent which are set forth in said Exhibit X and Y, were not on account of the considerations for which the same were executed, wholly unauthorized by the tenor of said power of attorney and, therefore, void, then plaintiffs further complaining, say, in relation to said instrument last referred to, that in truth and fact, at the time of signing and delivery of them a large portion of the lands described in Exhibit A, and amounting to as many as fifty thousand acres or thereabouts and constituting probably more than half of the lands of which the said deceased Edward died seized, were wholly free from litigation, and the titles to the same, in the estate of said Edward Hanrick, deceased, were good and wholly uncontested by any person or persons, as against said estate. That for many years anterior, to wit, for more than ten years previous thereto, the titles to about thirty or forty thousand acres of said fifty thousand acres referred to next above were, and had long been, perfect, and had not been disputed in the courts of the country by any person claiming the same adversely to the title of which the said Edward Hanrick, died seized, and that, therefore, said representations made by the said Branch, in regard to the conditions of the titles of said estate, were false and fraudulent.

463 SEC. 22. That this, Branch's, said representations in regard to said eleven leagues of land appertaining to said estate having been recently lost to the same by said adverse decision were also wholly false and fraudulent.

SEC. 23. That this said representation in regard to his, Branch's, having been associated with the said Hale in the prosecution of said suit and of his having succeeded, in great part to the legal business of the said Hale on the latter's death, were also false and fraudulent.

SEC. 24. That this, Branch's said representations in regard to a portion of said estate going to waste for want of attention, and of the danger of Edward G. Hanrick selling off the lands appertaining to said estate at probate rate, and of thus placing them beyond the reach of said non-resident heirs, were also false and fra-dulent.

SEC. 25. That each and every one of said false representations had a material effect in influencing the said Philip O'Brien to sign said instruments in favor of said Branch and Sargent, and that he had not — said false representations or some of them been made to him as aforesaid, or had he then and there known the falsity of the same or of any of them he would not have said instruments as aforesaid; that he was induced by said false representations in regard to the condition of said title to agree to give a larger portion of said lands to the said Branch and Sargent than he would otherwise have done.

That he was induced by said false representations in regard to the portions of the estate going to waste, and in regard to said possible probate sales, and in regard to the necessity of taking immediate steps to recover said eleven leagues of land granted to La Serda, to act in the matter of signing said instruments with greater haste and on less investigation than he would otherwise have done.

464 That he was also induced by said false representations in regard to said Branch having been associated with the said Hale, and of having succeeded, in a great part to the latter's legal business, to repose greater confidence in the integrity and ability of the said Branch than he would otherwise have done, and thus to have acquiesced without suspicion in the said Branch's suggestion in regard to the manner and form of said contract, and in regard to said instruments, signed in connection with the same, being led by said representations to believe and so believing that Branch would not try to overreach him, Philip or his principal or permit the said Sargent so to do, and that he, the said Branch, would carefully protect the interests of him, Philip, and his principal in the terms of said contract, and in the execution of the instruments connected with the same.

SEC. 26. That had he, Philip, been aware of the cunning and unscrupulous character of the said Branch which false representations hereinbefore set forth show him to have been possessed of, he, Philip, would never have entrusted to him the matters hereinbefore named or have signed said instruments as hereinbefore detailed.

SEC. 27. That by means of the artifice and deceit hereinbefore shown to have been practiced by the said Branch in procuring the signing of said instruments in favor of himself and Sargent, and by taking advantage of the confidential relationship which then existed between Philip and said parties, they, the said Sargent and Branch, were enabled to overreach, and did overreach him, Philip and obtain an unconscio*us*able advantage of him and of his principals. That the consideration promised on which said deeds were executed was gros-ly inadequate the interest therein conveyed to the said
465 Branch and Sargent being reasonably worth, to wit, the sum of

$200,000.00 that while in said deed to Branch the payment of the consideration therein referred to is acknowledged no consideration had up to the time of the execution of said deed been paid by the said Branch, but that he thus made the same in accordance with a deliberate plot on his part to overreach and defraud the said Philip and his principal as aforesaid. That the said Branch failed to influence the said Philip at the time of the execution of this some of the legal force and effect of the words therein used in regard to said consideration, but permitted the said Philip to bel*ei*ve and the said Philip did bel*ei*ve that the consideration of said deed was said promise on the part of Branch, and that the consideration in the deed would in no way estop him from setting up the part of said promise.

SEC. 28 That the said Sargent and Branch have wholly failed to comply with their said promises and have expressly refused to do so. That the said Sargent did fail and refuse to give the said Philip and his wife a home in the former's house, as he agreed to do, but did on or about the — day of April, 1878, order the said Philip out of his house, and did forbid his remaining there, without any fauit on the latter'- part, nor did he provide, or offer to provide, other suitable board for him and his wife; and the said Sargent did, on or about to wit, the — day of April, 1878, expressly abandon said contract, and did then inform the said Philip that he would not advance a dollar with which to pay said expenses, of which failure and refusal of the said Sargent to perform that part of the said contract, which he had specially taken upon himself to do, the said Branch was immediately notified; nor has either the said Sargent or the said Branch, ever since that time, advanced any money for
466 that purpose or taken any steps whatsoever to fulfill the said agreement in regard to said expenses but have wholly abandoned the same.

SEC. 29. And the said Branch also did wholly fail and refuse to perform the share of said contract, which he specially took upon himself, nor has he ever instituted or attempted to institute, or offered to institute, any legal proceedings for the recovery of said lands; nor did, he after the signing of said deeds, ever take any steps whatsoever for the purpose of establishing the title of said Eliza O'Brien or of his vendees in and to said lands but he has wholly failed and refused so to do; and he did on or about — day of April, 1878, substantially inform the said Philip that he would not institute any legal proceedings whatsoever, or take any steps in relation to said matters, until the said Philip should furnish him with at least $250, and that he shortly thereafter ceased and refused to communicate with the said Philip on said subject, although the said Branch well knew that the said Philip, on account of his poverty and that of his principals, would never have signed said instruments in favor of said Branch and Sargent, but for the assurance on the part of said Branch that the expenses would be paid by them, and that neither he, the said Philip, or his principals should ever be called upon to pay the same or any part thereof. That said failure and refusal on the part of said Branch and Sargent to comply with their said promises was in accordance with a deliberate plan and intent on their part at the time of the execution of the said deeds not to comply with their said promises. That at the time of the execution of the same neither of them ever did intend to comply with the said promise which induced the said O'Brien to execute said conveyances, and said promises were made for the purpose only of establishing and defrauding the said O'Brien 467 and his said principals out of the interest in said land which said deeds purport to convey.

SEC. 30. That on the — day of ——, 1879, the said heirs of James Hanrick instituted a suit of trespass to try title against the said Edward G. Hanrick, in the district court of Falls county, Texas, for the recovery of their undivided one-third interest in a portion of said lands, described in Exhibit A, said suit being styled "No. 1728. Nicholas Hanrick *et al. vs.* Edward G. Hanrick *et al.*" That on the trial of the point of law involved in said suit the demurrer of the defendant was sustained, the same being to the effect that since James Hanrick was an alien when descent was cast, neither he, nor any of the alien heirs of Edward Hanrick, deceased, inherited an interest in his estate, from which ruling of the court the plaintiff appealed. That the said William Brady, for himself, and for the said Eliza M. O'Brien, did at great expense furnish additional counsel to said appellants for the purpose of assisting them in the proper presentation and argument of said case in the supreme court of Texas, and did contribute very materially to the success of said appellants in obtaining the ruling of the supreme court, as the same was in fact obtained to the effect that the said James Hanrick, though an alien when descent was cast, nevertheless did inherit an interest in said estate in the same manner as though he were a citizen of Texas. In which ruling all the parties claiming an interest in the lands appertaining to said estate from and under any of said alien heirs, were materially interested.

SEC. 31. Plaintiffs say that they did, on the 14th day of February, 1880, institute this suit at law of trespass to try title for the 468 recovery of their interest in the lands described in said Exhibit A which are situated in Falls county, against the said defendant Edward G. Hanrick, in this court, and also a similarly styled cause, except as to number, was instituted by them in the circuit court of the United States for the western district of Texas at Austin, for recovery of their said interest in the lands appertaining to said estates situated in the latter district which said suits have been vigorously prosecuted down to the present time; of the institution and prosecution of which they, the said Branch and Sargent, have ever been fully informed.

SEC. 32. That at no time since the said Sargent and Branch refused to comply with the terms of their said agreement, which constituted the consideration on which said instruments described in said Exhibits X and Y were executed, to wit, at no time since the summer of 1878 until on or about the — day of ——, 1881, the same being long after the institution of said suit in said Federal courts, did they, the said Sargent and Branch, intimate or in any manner indicate to plaintiffs that they had or would claim an interest in said lands by virtue of said instruments last referred to; nor have they ever performed, or tendered to the said Eliza O'Brien, of Ireland, or to her said vendors or to any of the heirs of James Hanrick, deceased, any assistance whatsoever in the prosecution of this suit hereinbefore mentioned, and in the obtaining of the said ruling in the supreme court of Texas.

SEC. 33. That at the time of the institution of this suit plaintiffs were not aware nor had they any reason to believe, that the said John B. Sargent or the said Wharton Branch, or either of them, claimed or would presume to claim any interest in said lands by virtue of said contract which they had both, long since, abandoned, or by virtue
469 of said instruments last referred to, since for nearly two years
anterior to the institution of said suits at law, neither said Branch or the said Sargent had in any manner whatever indicated an*d* intention or disposition of fulfilling their said agreements, in consideration of which said instruments were signed in their favor; nor had said Branch evinced any disposition to violate the trust reposed in him as the custodian of said instruments, by recording the same, or by using, or permitting any use of the same, inconsistent with their character as escrows, or in such a manner as to c-st a cloud upon the title of plaintiff, nor did he, Branch, nor did the said Sargent, according to the bel*ei*f of plaintiff make any improper use of said instruments, till after the decision of the supreme court in the said case of Nicholas Hanrick *et al. vs.* Ed. G. Hanrick, wherein it was decided as aforesaid, that aliens were entitled under the laws of Texas, to inherit lands in said State at the time of the death of the said deceased Edward, but that shortly after said decision was rendered, on the — day of August A. D. 1881, and more than eighteen months after the institution of this suit at law in the United States circuit court at Waco, the said Branch caused said three instruments, set forth in said Exhibits W, X & Z to be filed in the office of the county court of Falls county, Texas.

The premises considered plaintiffs pray that they have and recover of the said Wharton Branch and John B. Sargent as well as the said Ed. G. Hanrick, an undivided one-third interest in said lands described in said Exhibit A and for all other rel*ei*f both general and special and for costs of court.

BRADY & RING,
J. M. ANDERSON,
Att'ys for Plaintiffs.

470 The foregoing is endorsed as follows, to wit: No. 14. U. S. circuit court at Waco. Eliza M. O'Brien *et al. vs.* Edward G. Hanrick. Plaintiffs' first supplemental petition. Filed April 5th, 1883. J. H. Finks, clerk.

471 In U. S. Circuit Court, 5th Circuit and N. D. of Texas, at Waco, Oct. Term, 1882.

E. M. O'Brien *et al.*
vs.
E. G. Hanrick.

Comes the def't, E. G. Hanrick, by his att'ys, and, answering the 4th amended petition of plaintiffs herein filed, says:

1st. That said petition is insufficient in law and shows no right in plaintiffs to have and maintain said suit, and of this def't prays judgment.

2nd. And for special ground of demurrer and exception to said petition this def't says that it appears therefrom that pl'ffs are tenants in common and cannot therefore join in this action to recover their said several interests, and of this def't prays judgment.

3rd. It appears from said petition that other parties therein named, viz., Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, and others, are necessary parties to this suit, and of this def't prays judgment.

4th. It appears from said amended petition that the pl'ffs therein claim title to the lands sued for by another and different right and title than that set up in their previous pleadings and is in substance and form a new suit; wherefore def't prays that pl'ffs be adjudged to pay costs accrued to date of filing said amendment.

5th. It appears from said petition that more tham nine years had elapsed from the date of the death of Edward Hanrick, the alleged ancestor, before the alleged alien heir, Elizabeth O'Brien, sold said lands so inherited to the pl'ffs or brought suit to recover the same, she being an alien and not in possession thereof; wherefore pl'ffs are barred.

6th. And, further answering said petition, def't denies all and singular the allegations therein contained and demands strict proof.

7th. And, further answering this petition, this def't comes and defends the wrongs, injuries, and trespasses therein alleged 472 against him, and says that he is not guilty of the same as therein charged against him, and of this he puts himself upon the country.

GOODRICH and CLARKSON,
Att'ys for Def't.

And, further, this def't avers that he claims as the owner in fee an undivided two-thirds interest in and to the several tracts of land described in Exhibits A, B, and C, hereto attached and made part of this plea, the said tract being parts and parcels of the land sued for by pl'ffs and described in said petition, the other undivided one-third interest being the property of his cotenant, E. J. Gurley, who resides in Falls county, in the State of Texas, and def't avers that he and his said cotenant jointly occupy, use, and possess the above-mentioned lands.

And, specially in bar of pl'ff's action, this def't avers that as to the said interest in the above-mentionted tracts of land he and those whose estate he has have had and held peaceful, continuous, exclusive, adverse possession of the same for three years and more before the institution of this suit, claiming the same under title and color of title by regular claim of transfer from the sovereignty of the soil down to him, and this he is ready to verify.

And, further, specially in bar, this def't avers that he and those whose estates he has and holds in the aforesaid lands have had and held peaceable, continuous, exclusive, adverse possession of the same for five years and more before the institution of this suit, claiming the same under deeds duly recorded, cultivating, using, and enjoying the same and paying all taxes due thereon, and this he is ready to verify.

473 And, further, specially in bar, this def't avers that he and those whose estate he has and holds in the aforesaid lands have had and held peaceable, continuous, exclusive, adverse possession of the same for more than ten years before the institution of this suit, cultivating, using, and enjoying the same, claiming good right and title thereto, and this he is ready to verify.

GOODRICH & CLARKSON,
Att'ys for Def't.

Filed April 3rd, 1883.

J. H. FINKS, *Clerk.*

Endorsed: No. 14. Eliza M. O'Brien *et al. vs.* E. G. Hanrick. Answer to plaintiffs' 4th amended original petition.

474 ELIZA M. O'BRIEN *et al.*
vs.
E. G. HANRICK.
} No. 14.

Cause pending in the circuit court of the United States for the northern district of Texas, at Waco.

Now comes John B. Sargent, a resident citizen of the city of Boston, in the State of Massachusetts, and Wharton Branch, a resident citizen of the city and county of Galveston, Texas, and represent unto this honorable court that they have an interest in the property described in the plaintiffs' petition adverse to the plaintiffs and defendant, and they pray that they may be permitted by the honorable court to intervene in the above entitled and numbered cause and make themselves parties defendant therein in order that their rights may be adjudicated. The said Sargent represents that he is the owner in fee simple of the undivided six-sixteenths of the lands described in plaintiffs' petition, holding the same under deeds duly executed by the heirs of Edward Hanrick, deceased, and registered as required by law, for a valuable consideration paid, with full warrantee of title, and that the said Wharton Branch is the owner of three-sixteenths of the land described in plaintiffs' petition and is holding the same under deeds duly executed by the heirs of said Edward Hanrick, deceased, and registered as required by law, for a valuable consideration paid and a full warrantee of title, and he prays that he may be permitted to intervene in said cause in order that his rights under said deeds may be adjudicated in said cause, and for full and general relief.

JOHN B. SARGENT,
By his attorney, F. BOMNELL.
WHARTON BRANCH.

Endorsed: No. 14. Eliza M. O'Brien *et al. vs.* Ed. G. Hanrick. Motion for leave to intervene. Filed Ap'l 4, 1883. J. H. Finks, clerk.

475 ELIZA M. O'BRIEN *et al.*
vs.
EDWARD G. HANRICK. } No. 14.

Cause pending in the circuit court for the northern district of Texas, at Waco, April Term, 1883.

Now comes John B. Sargent, a resident citizen of the city of Boston, in the State of Massachusetts, and, appearing in court as a party therein, says that plaintiffs' petition is not sufficient in law, and of this he prays the judgment of the court.

He says that it is apparent on the face of the plaintiffs' petition that there is a non-joinder of parties necessary to the determination of this suit, and of this he prays the judgment of the court.

He says that at the death of Edward Hanrick, the intestate, in the State of Alabama, in 1865, that Elizabeth O'Brien, the sister of deceased, and John and James Hanrick, the brothers of deceased, and Edward G. Hanrick, the defendant herein, were the only heirs-at-law of the intestate and became each the owners of an undivided one-fourth interest in the lands involved in this suit and set out in plaintiffs' petition; that neither James Hanrick nor John Hanrick nor their heirs-at-law or assigns nor either — any of them are parties herein, and of this he prays the judgment of the court.

He denies all and singular the allegations in plaintiffs' petition contained, and says that he is not guilty of the several trespasses laid to his charge nor any or either of them.

He avers that said Elizabeth O'Brien, John and James Hanrick on the 16th day of May, 1870, made, executed, and delivered to one Philip O'Brien their certain power of attorney, authorizing and empowering said Philip O'Brien to sell and convey their said interest in the several shares of the estate of the said Edward Hanrick, deceased, and coupled said power of attorney with an interest in the said estate.

476 That on the 14th day of February, 1878, said Philip O'Brien, in consideration of one thousand dollars to him paid by John B. Sargent, made, executed, and delivered to the said John B. Sargent a deed, with full covenants of warrantee, to one undivided one-half of the shares belonging to the said Elizabeth O'Brien, John & James Hanrick as the attorney-in-fact of the said Elizabeth O'Brien and John and James Hanrick and as the agent of his wife, Eliza M. O'Brien, and himself; that said deed was made

and executed and delivered in good faith for a valuable consideration paid without any notice.

And the said John B. Sargent avers that at the time of making and delivery of the said deed, dated on the 14th day of February, 1878, the said Philip O'Brien agreed and undertook to cure any defect in the power of attorney and the title conveyed thereunder, if any existed, which is denied, and in pursuance of such agreement obtained conveyances from all parties in interest to be made to his wife, Eliza M. O'Brien, plaintiff herein; that said Philip O'Brien taking by purchase and taking the deeds in the name of his wife, the title therein conveyed inured directly to the benefit of the purchaser, the said John B. Sargent.

The said John B. Sargent, therefore, prays that he have judgment establishing his right to the share of the land described and set out in plaintiffs' petition, and that he have a judgment and decree against all parties to said suit for partition, and that he have the share adjudged to him set apart and allotted to him in severalty, and for all cost and general relief.

F. BARNARD,
Att'y for J. B. Sargent.

[Endorsed:] Original answer of Joh- B. Sargent. Filed Ap'l 4, 1883. J. H. Finks, clerk.

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ELIZA M. O'BRIEN *et al.*
vs.
EDWARD G. HANRICK.
No. 14.

Cause pending in U. S. circuit court at Waco.

Now comes Wharton Branch, a resident of the city and county of Galveston, State of Texas, and, appearing in said cause as party therein, says that plaintiffs' petition is not sufficient in law, and of this asks judgment of the court.

2nd. He says that it is apparent on the face of said petition that there is a non-joinder of proper and necessary parties herein, and of this asks judgment of the court.

3rd. He says that at the death of Edward Hanrick, the intestate, in the State of Alabama, in 1865, that Elizabeth O'Brien, the sister of deceased, and James Hanrick and John Hanrick, the brothers of deceased, and Edward G. Hanrick, defendant (the only child and sole heir-at-law of Philip Hanrick, also brother to said intestate, who had departed this life prior to said intestate, Edward Hanrick), became and were the sole heirs-at-law to said intestate and became vested in coparcenary to the entire estate of said intestate, each owning one undivided one-fourth interest thereof, and that it further appears on the face of said petition that neither James Hanrick nor John Hanrick nor their heirs or assigns nor any nor either of them are parties hereto, and of this he asks judgment of the court.

4th. He denies all and singular the allegations in plaintiffs' petition contained, and says he is not guilty of the several supposed trespasses laid to his charge nor any or either of them.

5th. He avers that the said Elizabeth O'Brien, born Hanrick, and James and John Hanrick did on the 16th day of May, A. D. 1870, make, execute, and deliver to one Philip O'Brien their cer-
478 tain power of attorney, wherein and whereby they and each of them, severally and jointly, authorized and empowered said Philip O'Brien, among other things, to sell and convey their said interests in said estate, and coupled said power with an *u*nterest in said estate mentioned in said power and made the same thereby irrevocable.

That on the 14th day of February, 1878, said Philip O'Brien, in consideration of the money theretofore paid out and expenses thereto incurred and legal advice and information previously and then furnished and rendered by defendant at the special instance and request of said Philip, and for which said Philip had agreed to pay to defendant the sum of one thousand dollars, the reasonable value therefor, did, acting for himself and his said wife, Eliza M. O'Brien, and his said principals, Elizabeth and James and John Hanrick, sell and convey to this defendant one undivided one-fourth of the said three-fourths of said estate, and that the same was so conveyed to this defendant by deed duly executed and delivered with full covenant of warranty in good faith, without notice of any defect in said power of attorney, for a valuable consideration, as aforesaid, fully paid without notice to defendant.

6th. Defendant also avers that at the time of the making and delivering said deed to defendant, on February 14th, 1878, said Philip O'Brien at the same time agreed and undertook to cure any and all defects in said power of attorney to him and the title thereunder conveyed to defendant, if any defects existed, which is denied, and, in pursuance of such agreement, obtained conveyances from all the parties in interest to be made, the said Philip taking such conveyances by way of purchase and taking the same in the name of his wife, and the title so conveyed enured directly to the benefit of this defendant, the vendee of said Philip O'Brien.

479 7th. Premises considered, defendant prays that he have judgment as against all parties to this suit establishing his said right, title, and interest in said estate, and that he have the same set apart to him in severalty, and for costs and full and general relief.

WHARTON BRANCH.

Endorsed: U. S. circuit court, Waco. No. 14. Eliza M. O'Brien *et al. vs.* Edward Hanrick. Original answer of Wharton Branch. Filed April 4, 1883. J. H. Finks, clerk.

480 In U. S. Circuit Court at Waco, Texas, Spring Term, 1883.

ELIZA M. O'BRIEN *et al.*
vs. } No. 14.
E. G. HANRICK.

Be it remembered that upon the trial of this cause before the jury, it having appeared by the pleadings of the plaintiffs and the admissions of the parties that Edward Hanrick died in the State of Alabama in 1865 unmarried and without issue: that he left surviving him the defendant, E. G. Hanrick, his nephew, being a son of his deceased brother, Philip Hanrick, the said nephew, E. G. Hanrick, being a native of said State of Alabama: that the said deceased, Edward Hanrick, also left surviving him two brothers, James Hanrick and John Hanrick, and one sister, Elizabeth O'Brien, all then residing in Ireland and natural-born subjects of the United Kingdom of Great Britain and Ireland and aliens to the United States: that said John Hanrick continued to remain such subject until his death, which occurred in Ireland in 1871, unmarried and without issue: that said James Hanrick also continued to remain such subject until his death, which occurred in Ireland in 1875, intestate. The said James Hanrick left surviving him five children, viz., Nicholas, Annie, and Ellen Hanrick, Elizabeth, wife of Thomas Clare, and Catherine, wife of Martin O'Neil, and five grandchildren, the children of his deceased daughter, Mary, wife of Peter Whalen; that said Elizabeth O'Brien still lives in Ireland, and that at the time of the death of Edward Hanrick, in 1865, Nicholas Hanrick was residing in the State of New York and has continued to reside in New York.

* * * * * * *

481 And in the further progress of the cause the plaintiffs produced in evidence before the jury a deed signed Eliza O'Brien to Eliza M. O'Brien, dated May 11, 1878, as follows, viz:

This indenture made the 11th day of May in the year one thousand eight hundred and seventy-eight between Eliza O'Brien of Tomfarney, in the county of Wexford, Ireland, widow, party of the first part, and Eliza Mercy O'Brien, the wife of Philip O'Brien, of the city of New York, in the State of New York, in the United States of America, party of the second part, witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar, lawful money of the United States, to her in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, her heirs, executors, and administrators forever released and discharged from the same, by these presents have granted, bargained, sold, aliened, remised, released, conveyed, confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to her heirs and assigns forever, all the right title and interest of the party of the first part, in, and to each and all of the following tracts of land, which belonged to Edward Hanrick, of Montgomery, Montgomery county, State of Alabama, U. S. A. (now deceased) or in which he had or claimed to have a right, title, or interest, all situated, lying and being in the State of Texas, in the United States of America, viz:

First. A tract of (44,280) forty-four thousand two hundred and eighty acres in Williamson county.

Second. A tract of forty-four hundred and twenty-eight acres (4,428) in Falls county; which two tracts of land were
482 granted to one Rafael Aguere.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county; which tract of land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Falls county; which tract of land was granted to one Antonio de la Serda.

Fifth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Bell county; which tract of land was granted to one Miguel Davilla.

Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county; which tract of land was granted to one J. F. de Rumazaz.

Seventh. A tract of twenty-two hundred and fourteen (2,214) acres in Liberty county; which tract of land was granted to one Andrew Weaver.

And also any and all other lands in the said State of Texas which belonged to the said Edward Hanrick at the time of his decease, in which he had any right, title, or interest, the same having descended to, and the title thereof became vested in, the said party of the first part upon the decease of the said Edward Hanrick. The party of the first part being his sister and one of his heirs at law.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof with the appurtenances.

483 To have and to hold the above granted bargained and described premises, with the appurtenances unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit, and behalf, forever.

And the said Eliza O'Brien, for herself, her heirs, executors and administrators, does covenant, grant, and agree to and with the said party of the second part her heirs and assigns, that the said Eliza O'Brien, at the time of the sealing and delivery of these presents, is lawfully seized in her own right, of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises with the appurtenances and has good and lawful power and authority to grant, bargain, sell, and convey the same in manner aforesaid; and the said party of the second part her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises and every parcel thereof,

with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unincumbered, of and from all former and other grants, title, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever; and also that the said party of the first part and her heirs, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore-granted premises, by, from, under, or in trust for them, or either of them, shall or will at any time or times hereafter, upon the reasonable request and at
the proper costs and charges in the law of the said party
484 of the second part, her heirs and assigns, make, do, and ex-
ecute, or cause to be made, done, or executed, all and every such further and other lawful and reasonable acts, conveyance, and assurances, in the law for the better and the more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part her heirs and assigns, forever, as by the said party of the second part, her heirs or assigns, or her and their counsel, learned in the law shall be reasonably advised or required; and the said Eliza O'Brien, for herself her heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said party of the first part and her heirs and assigns against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents defend forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ELIZA O'BRIEN. [SEAL.]

Pl'ffs also produced in evidence a deed signed by Philip O'Brien and Eliza M. O'Brien to William Brady, dated Nov. 27, 1878, as follows, viz:

Warranty Deed.

This indenture, made the twenty-seventh day of November in the year one thousand eight hundred and seventy-eight, between Eliza M. O'Brien, wife of Philip O'Brien, of the city of Boston and State of Massachusetts, and said Philip O'Brien, parties of the first part, and William Brady of the city, county and State of New York, party of the second part witnesseth:

That the said parties of the first part for and in considera-
485 tion of the sum of ten dollars, lawful money of the United
States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part, his heirs executors, and administ*ar*tors, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, demised, released, conveyed,

and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part and to his heirs and assigns forever, all the undivided one-half interest of any equity of title he may have or acquire of, in, and to, the following-described tracts, pieces or parcels of land situated, lying and being in the State of Texas, the United States of America, viz:

First. A tract of forty-four thousand two hundred and eighty (44,280) acres in Williamson county.

Second. A tract of forty-four hundred and twenty-eight (4,428) acres in Falls county, which two tracts of land were granted to one Rafael Aguere.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county, which tract of land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Falls county, which tract of land was granted to one Antonio de la Serda.

Fifth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Bell county, which tract of land was granted to one Miguel Davilla.

486 Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county, which tract of land was granted to one J. F. de Rumazor.

Seventh. A tract of twenty-two hundred and fourteen (2,214) acres in Liberty county, which tract of land was granted to one Andrew Weaver.

And also an undivided one-half interest of any interest which the parties of the first party have or may acquire in and to any other land in the State of Texas, and being the same premises which were conveyed to the said Eliza M. O'Brien one of the parties of the first part by three certain deeds, one thereof being dated the third day of April, one thousand eight hundred and seventy-eight made and executed by Honora Hanrick, spinster, of Brooklyn, Kings county, State of New York, daughter of James Hanrick, of Tommanine county of Wexford, Ireland, deceased; another thereof being dated the third day of April, 1878, executed by Ellen Hanrick, spinster, of the city, county and State of New York, daughter of James Hanrick, of Taminie, county of Wexford, Ireland, deceased; another thereof bearing date the eleventh day of May, one thousand eight hundred and seventy-eight and executed by Eliza O'Brien, of Tomfarney, in the county of Wexford, Ireland, widow, said recited interest or title hereby intended to be conveyed being one-half of such as has or may accrue to said parties of the first part under the foregoing-recited deeds of conveyance thereof, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, courtesy; and right of courtesy, property, possession, claim, and demand whatso-
487 ever as will in law as in equity, of the said parties of the

first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant and agree to, and with the said party of the second part, his heirs and assigns, that the said Eliza M. O'Brien, at the time of the sealing and delivery of these presents is lawfully seized in her own right of a good absolute, and indefeasible, estate of inheritance, in fee simple of and in all and singular the above granted bargained and described premises with the appurtenances and has good right full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part his heirs and assigns shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof with the appurtenances without any let, suit, trouble, molestation eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons, lawfully claiming or to claim the same, and also that the said party of the first part and their heirs, and all and every other person or persons whatsoev-r lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore-granted premises, by, from, under, or in trust for them or either of them, shall or will at any time or times hereafter upon a reasonable request and the proper costs and charges, in the law of the said party of the second part his heirs and assigns, make, do, and execute, or cause or procure to be made, done or executed, all and every such further and other alwful and reasonable
488 acts, conveyances, and assurances in the law for the better and more effectually vesting and cinfirming the premises hereby in-ended to be granted in and ti the said party of the second part his heirs and assigns, forever, as by the said party of the second part his heirs or assigns, or his counsel learned in the law shall be reasonably devised, advised, or required. And the said parties of the first part and their heirs as against the equities or title in or to the above-described and hereby granted and released premises, and every part or parcel thereof, with the appurtenances unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person or persons, whosoever lawfully claiming or to claim -he same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ELIZA MERCY O'BRIEN. [SEAL.]
PHILIP O'BRIEN. [SEAL.]

Sealed and delivered in the presence of—
DUNCAN CAMERON.
EDWIN F. COREY.

Thereupon the pl'ffs rested and the deft E. G. Hanrick, by his counsel, produced in evidence the following deeds before the jury, viz:

* * * * * * *

A general power of attorney, dated May 16, 1870, by James Hanrick, John Hanrick, and Elizabeth O'Brien to Philip O'Brien.

7. Deed of James Hanrick, John Hanrick, and Elizabeth O'Brien, by their att'y-in-fact, Philip O'Brien, to William Jenkins, Jr., dated Feb. 1, 1878, as follows, viz:

Know all men by these presents, that we James Hanrick, John
Hanrick Elizabeth O'Brien. all of the county of Wexford,
489 Ireland, in consideration of one dollar and other valuable
considerations paid by William Jenkins Jr. of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged do hereby give, bargain, sell and convey unto the said William Jenkins, Jr., his heirs and assigns, all the right, title and interest which we or any of us have in or to the following-described tracts of land situated in the State of Texas, which belonged to Edward Hanrick, late of Montgomery, Montgomery county, State of Alabama, decesaed 1865, or in which he had or claimed to have a right, title, and interest, and known and described as follows, to wit:

First. A tract of forty-four thousand two hundred and eighty (44,280) acres in Williamson county, originally granted to Rafael Aguere.

Second. A tract of forty-four hundred and twenty-eight (4,428) acres in Falls county, which two tracts of land were granted to one Rafael Aguere.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county which land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Falls county, which tract of land was granted to one Antonio de la Serda.

Fifth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Milam county which said tract of land was granted to one Miguel Davilla.

Sixth. A tract of forty-four hundred and seventy-eight (4,478) acres in Liberty county, whcih tract of land was granted to on- J. F. de Rumazar.

Seventh. A tract of twenty-two hundred and fourteen (2,214)
acres in Liberty county, which tract of land was granted
490 to one Andrew Weaver.

And also any interest which we or any of us may have in or to any other land in the said State o- Texas by reason or virtue of our being heirs of the said Edward Hanrick, deceased; to have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said William Jenkins, Jr., and his heirs and assigns, to their own behoof forever; and we do hereby, for ourselves and our heirs, executors, and administrators, covenant with the said grantee and his heirs and assigns that we are lawfully seized of an interest in fee simple of the granted premises aforesa-d that they are free from all incumbrances by us incurred; that we have good right to sell and convey the same as aforesaid, and that we, will and our heirs, executors, and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons.

In witness whereof we the said James Hanrick John Hanrick and Elizabeth O'Brien, hereunto set our hands and seals this first day of February in the year one thousand eight hundred and seventy-eight.

JAMES HANRICK,
JOHN HANRICK,
ELIZABETH O'BRIEN,
By PHILIP O'BRIEN,
Their Attorney-in-fact.

Signed and sealed in the presence of—

EDWARD J. JONES.
FANNIE J. SARGENT.

It was admitted that the interest conveyed by above deed was on same day conveyed to Eliza M. O'Brien, wife of Philip O'Brien.

491 8. Deed by Philip O'Brien and Eliza M. O'Brien to John B. Sargent, dated Feb. 1, 1878, as follows, viz:

Know all men by these presents that I, Elizabeth Mercy O'Brien in her own right, wife of Philip O'Brien, of Boston in the county of Suffolk and Commonwealth of Massachusetts, late of Albany, New York, the said Philip joining in this conveyance, in consideration of one dollar and other valuable considerations paid by said John B. Sargent of said Boston, receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said John B. Sargent, in his own right, his heirs and assigns, one undivided half of all my right, title, and interest in and to the following-described lands, situated in the State of Texas, the said land being the same this day conveyed to me by William Jenkins, Jr., to wit:

First. A tract of forty-four thousand two hundred and eighty (44,280) acres in Williamson county.

Second. A tract of forty-four hundred and twenty-eight (4,428) (acres) in Falls county which two tracts were granted to one Rafael Aguere.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county, which tract of land was granted to one Pedro Zarza.

Fourth. A tract of forty-eight (thousand) seven hundred and eight (48,708) acres in Falls county, which tract of land was granted to one Antonio de la Serda.

Fifth. A tract of forty-eight thousand seven hundred and eight acres in Bell county which tract of land was granted to one Miguel Davilla.

Sixth. A tract of four thousand four hundred and twenty-eight (4,428) acres in Liberty county which tract of land was granted to one J. F. de Rumazar.

Seventh. A tract of twenty-two hundred and fourteen (2,214) acres in Liberty county which tract of land was granted to one Andrew Weaver, and also one undivided one-half interest I have or may have to any other land in the said State of Texas by 492 virtue of the aforesaid-mentioned deed to — from William Jenkins Jr. of even date herewith.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said John B. Sargent, and his heirs and assigns, to their own use and benefit; and I do hereby, for myself and my heirs, executors and administrators, covenant with the said grantee, and his heirs and assigns, that I am lawfully seized of an interest in fee simple of the granted premises as aforesaid; that they are free from all incumbrances by me incurred, and I have good right to sell and convey the same as aforesaid & that I will & my heirs executors & adm'rs shall warrant & defend the same, to the said grantee, and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof we, the said Eliza Mercy O'Brien and Phillip O'Brien hereunto set our hands and seals this the 1st day of February in the year one thousand eight hundred and seventy-eight.

ELIZA MERCY O'BRIEN.
PHILLIP O'BRIEN.

Signed, sealed, and delivered in presence of—
EDWOOD J. JONES.
FANNIE J. SARGENT.

9. Deed by Philip O'Brien in his own right and as agent of his wife and as att'y-in-fact for James Hanrick, John Hanrick, and Elizabeth O'Brien to John B. Sargent, dated Feb. 14, 1878, as follows, viz:

THE STATE OF TEXAS, }
County of ——. }

Know all men by these presents, that I, Philip O'Brien, of the city of Boston, county of Suffolk, Massachusetts, acting for myself and for my wife Eliza M. O'Brien, and for James Hanrick, John Hanrick and Elizabeth O'Brien, heirs of Edward Hanrick, deceased, parties of the first part in consideration of one thousand dol- 493 lars, to be paid to us by John B. Sargent, of the same place, besides other good considerations to be rendered have granted, bargained, and sold, and do hereby grant, bargain, sell, alien, convey and confirm, unto the said John B. Sargent party of the second part his heirs and assigns, forever, one undivided one-half interest of, in, and to all the property of the es-ate of Edward Hanrick deceased, situated in the State of Texas, to which we are in any way

entitled, our interest therein being three-fourths thereof and for more perfect description, reference is had to the inventory of said estate and the records pertaining thereto, Edward G. Hanrick, being the administrator and entitled to one-fourth thereof, and the description of the same in parts (is) as follows: to wit: Ten leagues in Williamson county granted to Rafael Aguere; one league in Falls county same grant; twenty-one thousand four hundred and seventy-six acres supposed to be in Falls county and in Williamson county granted to Pedro Zarza; eleven leagues in Falls county, granted to Antonio de la Serda; eleven leagues — Milam county, granted to Miguel Davilla; one league in Liberty county granted to J. F. de Rumazar, and one-half a league in Liberty county granted to Andrew Weaver; to have and to hold all and singular the above-described and conveyed premises and property, with all the rights, privileges, hereditaments and appurtenances, thereunto belonging or in any way appertaining unto the said John B. Sargent, party of the second part his heirs and assigns forever; and we, the said parties of the first part, do hereby bind ourselves, our heirs, executors, administrators, hereto the said party of the second part his heirs, and assigns, that we are now well seized of all and singular the said property and premises and that we have good right and lawful authority to make this sale and conveyance of the
494 same; that our said interest in the property and premises are
free and clean of all and every incumbrance and that unto the said party of the second part his heirs and assigns, that we and our heirs, executors and administrators will forever warrant and defend the same against all adverse lawful claim or claims whatsoever.

In testimony whereof we do hereunto fix our hands and seals using scrolls for seal this the fourteenth day of February, A. D. one thousand eight hundred and seve*b*ty-eight.

PHILIP O'BRIEN, [L. S.]
ELIZA M. O'BRIEN, [L. S.]
JAMES HANRICK, [L. S.]
JOHN HANRICK, [L. S.]
ELIZABETH O'BRIEN, [L. S.]
By PHILIP O'BRIEN,
Their Attorney-in-fact.

Witnessed at request of grantors.
WHARTON BRANCH.
FRED. BARNARD.
C. G. HATCH.

10. Deed by same grantors as in last mentioned above to Wharton Branch dated Feb. 14, 1878, as follows, viz:

THE STATE OF TEXAS, }
County of Galveston. }

Know all men by these presents that I, Philip O'Brien, of Boston, Massachusetts, acting for myself and for my wife Eliza M. O'Brien and for James Hanrick and John Hanrick and Elizabeth O'Brien,

heirs of Edw*ra*d Hanrick deceased, parties of the first part, in consideration of one dollar to us paid by Wharton Branch, of the city and county of Galveston, Texas, besides other good and valuable considerations have granted, bargained, sold, and do hereby grant, bargain, sell, and alien, convey, and confirm, unto the said Wharton Branch, party of the second part, his heirs and assigns, forever, one undivided one-fourth interest of, in and to all of the
495 property, of the estate of Edw*ra*d Hanrick, deceased, situated in the State of Texas and for more perfect description reference is had to the inventory of said estate and the records pertaining thereto, Edward G. Hanrick, being the administrator of the said estate and *indebted* to one-fourth thereof, and the description of the same is in part as follows, to wit: Ten leagues in Williamson county, and one league in Falls county, granted to Rafael A'Guere; 21,476 acres supposed to be in Falls county, and Williamson county, granted to Pedro Zarza; eleven leagues in Falls county granted to, Antonio de la Serda; eleven leagues in Williamson county, granted to J. F. de Rumazar, and on- half league in Liberty county granted to Andrew Weaver; to have and to hold all and singular the above-described and conveyed premises and property, with all the rights privileges, hereditaments, and app*e*rtenan*t*s thereunto belonging or in any wise appertaining unto said Wharton Branch party of the second part, his heirs and assigns, forever; and we the said parties of the first part, do hereby bind ourselves our heirs execut*i*rs, and administrators unto the said party of the second part, his heirs and assign-, and we and our heirs, executors and administrators will forever warrant and defend the same against all adverse lawful claim or claims whatsoever.

In testimony whereof we do hereunto fix our hands and seals using scrolls for seal, this the fourteenth day of February, A. D. one thousand eight hundred and seventy-eight.

PHILIP O'BRIEN, [L. S.]
JAMES HANRICK, [L. S.]
JOHN HANRICK, [L. S.]
ELIZABETH O'BRIEN, [L. S.]
By PHILIP O'BRIEN,
Their Attorney-in-fact.

Witnessed at request of grantors.
JOH- SARGENT.
C. D. HATCH.
F. BARNARD.

496 11. Deed by John B. Sargent to Wharton Branch, dated February 14th, 1878, conveying, in consideration of one dollar besides other good and valuable considerations, an undivided one-half of grantor's interest in estate of Edward Hanrick, deceased, and referring for description to deed to him above set out.

12. Deed by Nicholas Hanrick & wife to Eliza M. O'Brien, wife of Philip O'Brien, dated Aug. 21, 1877, as follows, viz:

This indenture, made the 21st day of August, in the year one thousand eight hundred and seventy-seven, between Nicholas Han-

rick, of the city, county, and State of New York, butcher, son of James Hanrick of Tournmanign, Ireland, brother of Edward Hanrick, and Kate Hanrick, his wife, of the same place, parties of the first part, to Eliza Mercy O'Brien, the wife of Philip O'Brien, of the city of New York, State of New York, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part, her heirs, executors and administrators, forever released and discharged from the same by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, all the right title and interest of the parties of the first part of, in, and to each and all of the following tracts of land which belonged to Edward Hanrick of Montgomery county, State of Alabama, United States of America, deceased, 1865, A. D.,
or in which he had, or claimed to have, a right title or in-
497 terest, all situated, lying, and being in the State of Texas, in
the United States of America, namely:

First. A tract of forty-four thousand two hundred and eighty (44,280) (acres) in Williamson county.

Second. A tract of forty-four hundred and twenty-eight (4,428) acres in Falls county, which two tracts of land were granted to one Rafael Aguire.

Third. A tract of twenty-one thousand four hundred and seventy-six (21,476) acres in Falls county, which tract of land was granted to one Pedro Zarza.

Four. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Falls county, which tract of land was granted to one Miguel Davilla.

Fifth. A tract of forty-eight thousand seven hundred and eight (48,708) acres in Bell county which tract of land was granted to one Miguel Davilla.

Sixth. A tract of forty-four hundred and twenty-eight (4,428) acres in Liberty county, which tract of land was granted to one J. F. de Rumazar.

Seventh. A tract of twenty-two hundred and fourteen (2,214) acres in Liberty county, which tract of land was granted to one Andrew Weaver.

And also any and all other lands in the State of Texas which belonged to the said Edward Hanrick at the time of his decease, or in which he had any right title or interest, the same having descended to, and the title thereof become invested in, the said party of the first part upon the decease of the said Edward Hanrick the party of the first part being his sister and one of the heirs-at-law.

Together with all and singular the tenements, hered-ta-
498 ments, and appurtenances thereunto belonging or in any-
wise appertaining, and the reversion and reversions, remain-

der and remainders, rents, issues, and profits thereof; and also the estate right, title, interest, and property, possession, claim, or demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same and every part and parcel thereof, with the appurtenances.

To have and to hold the above granted and bargained and described premises, with the appurtenances thereunto belonging, unto the said party of the second part her heirs and assigns, to their own use and benefit and behoof forever.

And the said Nicholas Hanrick and Kate Hanrick, his wife for their executors and administrators, do covenant grant and agree, to and with the said party of the second part, her heirs and assigns that the said Nicholas Hanrick and Kate Hanrick, his wife, at the time of the sealing and delivery of these presents, are lawfully seized in of a good, absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain sell and convey, the same in manner aforesaid, and that the said party of the second part, her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold and occupy, use and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the same now are free, clear, and discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature and kind whatsoever; and also that 499 the said parties of the first part and their heirs and all and every person or persons whatsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinafter-granted premises by law from, under, or in trust for them shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, her heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, her heirs and assigns, forever, as by the said party of *of* the second part, her heirs and assigns, or their counsel learned in the law, shall be reasonable advised or required, and the said Nicholas Hanrick and Kate Hanrick, his wife, and for their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

NICHOLAS HANRICK.
KATE HANRICK.

Sealed and delivered in the presence of—
ALEX. T. BLUM &
ALEX. O. SHANTER.

13. Deed by Ellen Hanrick to Eliza M. O'Brien, dated April 3,
1878, for like consideration as mentioned in deed last above,
500 conveying all her interest *all her interest* in same property,
similar covenants of warranty.

14. Deed by Honora Hanrick to Eliza M. O'Brien, dated April 3, 1878, same in form, substance, and recitals as deed last mentioned.

* * * * * * *

The def't E. G. Hanrick then produced evidence to the jury proving that he and his tenants and agents have had and held actual possession of the tracts of land sued for since 1876; that he has improved it, cultivated it, paid taxes on it, and jointly with his cotenant, E. J. Gurley, has held the same adversely to all others. Said improvements were not all within same enclosure, but were in different places, scattered about over each tract of land, the greater part not being enclosed. * * *

Evidence was then produced before the jury tending to sustain the allegations in plaintiffs' first supplemental petition, filed April 5th, 1883, and evidence was also produced to the jury tending to rebut the facts alleged in said plea.

The above and foregoing being the substance of all of the testimony admitted to the jury, the def't E. G. Hanrick, by his counsel, before the jury retired, prayed the court to direct the jury to return a general verdict for the defendants, but the court refused to so instruct the jury; to which ruling of the court the said def't E. G. Hanrick, by his counsel, then and there excepted and prayed a bill of exceptions, which is granted and made part of the record.

* * * * * * *

And upon the defence set up by the def't of want of title in the
pl'ffs when suit was brought the court charged the jury substantially as follows, viz: "The def't offers and urges to defeat the pl'ffs,
and intervenors offer and press on their own behalf two deeds made
by Philip O'Brien for himself and purporting to be attorney-
501 in-fact of his mother, Elizabeth O'Brien, and his uncles, John
and James Hanrick.

It is not controverted that at the time of the execution of these deeds to the intervenors both John and James Hanrick were dead, and had died subsequent to the death of Edward Hanrick. The death of John and James Hanrick revoked their power of attorney, and the instrument continued to have force only as the power of attorney of Elizabeth O'Brien, still living, and the said deeds to intervenors, unless void for fraud, on which issue I will instruct you further on in this charge, had the effect to convey to the intervenors $\frac{3}{4}$ of the interest which Elizabeth had in Edward Hanrick's estate at the time said power of attorney was executed, namely, $\frac{3}{4}$ of $\frac{1}{4}=\frac{3}{16}$ of the whole estate, leaving in said Elizabeth $\frac{1}{16}$ interest inherited direct from said Edward, and $\frac{1}{12}$ interest subsequently to Edward's death, through her brother John, making an interest of $\frac{7}{48}$ interest in the estate remaining in the said Elizabeth, notwithstanding the deeds to intervenors, giving to said deeds full effect as conveyances made and delivered in good faith, and to that extent, namely, to the extent of an interest of a $\frac{7}{48}$ portion of said land (if the pl'ffs' grantor was the said Elizabeth—that is, if Eliza O'Brien, who conveyed to Eliza Mercy O'Brien, is the said Elizabeth), the pl'ffs' right is not defeated or qualified by anything advanced by either the defendant or intervenors, and to that extent, if no further, you will find for the pl'ffs (if you have found that the said Eliza O'Brien and the said Elizabeth are the same person)."

To which ruling of the court in withdrawing the said issues from the jury, as well as the said ruling of the court upon the construction of the said deeds to the intervenors, and in directing
502 the jury that pl'ffs were entitled to recover a $\frac{7}{48}$ interest,
notwithstanding said deeds to intervenors, the def't Hanrick, by his counsel, then and there, before the jury retired from the box, excepted and prayed a bill of exceptions, which is granted, signed, and made part of the record.

A. P. McCORMICK,
Dist. Judge.

April 16th, 1883.

Endorsed: No. 14. Eliza M. O'Brien *et al.* *vs.* E. G. Hanrick. Bill of exceptions No. 7. Filed April 16th, 1883. J. H. Finks, clerk.

503 From the Minutes of the United States Circuit Court at Waco, April Term, 1883.

ELIZA M. O'BRIEN *et al.*
vs.
EDWARD G. HANRICK.
No. 14. April 6th, 1883.

On this day came on to be heard the above-entitled cause, and the plaintiffs, Eliza M. O'Brien and her husband, Phil*l*ip O'Brien, and William Brady, and the intervenor, John B. Sargent, and the defendant, Edw*ra*d G. Hanrick, appearing by their attorneys, and the intervenor, Wharton Branch, appearing for himself, all parties announced ready for trial. Thereupon came a jury of good and lawful men, to wit, C. W. Hickey, J. B. Johnson, G. W. Ballard, H. P. Harrington, B. C. Carr, J. C. Bragg, C. Rowan, C. H. Moore, E. C. Sufford, R. Rutherford, I. P. Pool, and J. C. Pendleton, who were duly selected, impanelled, and sworn according to law, and who, after hearing the evidence and the argument of counsel and having received the charge of the court, on the 10th day of April, 1883, retired to consider their verdict, and after duly considering the same they returned into open court the following verdict, to wit: "We, the jury, find for the plaintiff-. C. Rowan, foreman."

It is therefore ordered and adjudged by the court that the plaintiffs, Eliza M. O'Brien and Philip O'Brien and William Brady, have and recover of the defendant, Edward G. Hanrick, and of intervenors, Wharton Branch and John B. Sargent, one undivided one-third interest in and to the following-described lands and tracts of lands, being situated in Falls county, Texas:

Tract No. 1, a certain tract of land known as the Antonacia de la Serda eleven-league grant, situated in the county of Falls, on
the left bank of Brazos river, and bounded as follows, to wit:
504 Beginning at a point where an old channel enters said river
called "old bed of river," at a stake, from which 15 varas a — ten inches — bears south 47 degrees west and 21 W. another 15 — in diameter to hackberry 10 inches in dia., and 21 varas south 84½ west another; thence N. 62 E. 27,626 varas, crossing a creek called Isaac creek, to a stake in the plains for a corner; thence N. 28 W. 10,000 varas to another stake in the plains; thence S. 62 W. 28,966 varas to a stake in margin of said river, from which 10 varas S. 38½ E. a cottonwood 12 in. dia., another 6 in. dia. bears S. 8¾ degrees E.; thence down the said Brazos river with its meanderings to the place of beginning, and comprehending within its bounds one deed of eleven leagues of land, which said tract of land was granted to Matthew R. Williams, as attorney for said Antonacia de la Serda, on the — day of ——, A. D. 1883.

Tract number two, containing two parcels of land situated in said county of Falls, State of Texas, formerly granted by the proper officers of Coahuila and Texas to Pedro Zarza, by his attorney-in-fact, Robert L. Williams, and described as follows, to wit: The first said tracts, containing four leagues of land, more or less, adjoining the survey of Ignacio Golinda: Beginning at the lowest corner of said survey on the right bank of the Brazos river, thence south 62 degrees west, following the line of said survey, 19,330 varas to a stake for south corner to the second corner of this tract; thence S. 28 E. 5,000 varas to the third corner; thence N. 62 E. 21,880 varas to the Brazos river for the fourth corner; thence up the river with its meanders to the place of beginning; the second of said tracts containing one league of land and beginning at the west or northwest corner of the survey of two leagues of Juan Jose Acosta tract,
thence S. 62 W. 10,000 varas; thence S. 28 E. 2,500 varas;
505 thence N. 62 E. 10,000 varas; thence N. 28 W. to the place
of beginning.

Number three. The same being a tract of land lying and being in the county of Falls and described as a part of the eleven-league tract granted to Rafael Aguirie, situated on a branch of Cow bayou, beginning at S. W. corner of two leagues of land granted to Juan Jose Acosta, which is a stake in the upper boundary of four leagues granted to Jos- Antonio Manchoa, from which a cedar 5 in. in dia. bears N. 47 E. 14 varas, and an elm 6 inches in dia. bears S. 32 W. 9 varas; thence running south 62 west 10,000 varas to a stake planted in said boundary for the second corner; thence N. 28 W. 2,500 varas to the S. W. corner of a league of land granted to Pedro Zarza; thence N. 62 E. with the S. E. boundary 10,000 varas to the S. E. corner in S. W. boundary of the land of Acosta; thence S. 20 E. to the place of beginning, including one league of land, more or less, according to the original survey.

And it is further ordered that a writ of possession in favor of said plaintiffs issue therefor, and that plaintiffs do have and recover of such intervenors such costs by them incurred by reason of such intervention and of defendants all costs which were incurred herein, not including any costs incurred by the said intervention, for which let execution respectively issue.

506 In the Dist. Court, Falls County, Texas.

Nicholas Hanrick *et al.*
vs.
E. G. Hanrick *et al.*

Answers and deposition of John Hancock, of Travis county, State of Texas, to the accompanying interrogatories propounded to him in the above numbered and styled cause, taken before me, N. S. Walton, notary public within and for Travis county, in accordance with and by authority of the annexed commission.

Witness John Hancock upon oath saith:

Answer to interrogatory 1st. I was acquainted with Edward Hanrick in his lifetime. He lived in Montgomery, Alabama, and died, I understand, in that State.

Answer 2nd. He claimed to own ten leagues in Williamson county, the Rafael de Augerre, and one league of same in Falls county and interest in eleven leagues granted to M. Davila in Bell and Milam counties, five leagues of Pedro Zarza grant in Falls county, on the west side of the Brazos river, & eleven leagues granted to De Serda, in the same county, on the east side of the Brazos river, and a league and a half in Liberty county; do not know the grantee.

Answer to 3rd. So far as I knew, his att'ys and agents in Texas were E. J. Gurley, of Waco; William G. Hale, then of Galveston, and Hancock & West, of Austin. I had no connection with his business until the year of 1858; do not know what att'ys or agents he may have had prior to that time. It was the duty of Hancock & West to give their services as att'ys in behalf of his claim 507 of ownership to the land in Williamson county. Their engagement did not extend further. Col. Gurley seemed to have control and general direction over all his lands in Falls county. I understand that Mr. Hanrick regarded Mr. Hale as his counselor and advisor in all matter of litigation, to direct and assist in the suits which might be pending, and especially to represent him in such cases as might go to the Supreme Court of the United States.

Answer to 4th. The condition of his land as to title was, so far as I knew, all the titles except the land in Liberty county were contested by adverse claimants at, before, and after his death, much of it being held by force of arms or by threatening and insubordinate persons, litigation expenses, and vexations existing before my connection, and so continued to a large portion of it. He could never obtain possession of the land in Williamson county so as to hold peacable possession, tho' armed with a writ of possession from the Federal court. Afterwards and in process of time compromises were entered into with parties in Williamson county, but I do not know to what extent or what has been done with the compromises. Col. Gurley, I understood, was enabled to get hold and retain possession of a large portion of the lands in Falls county.

Answer to 5th. In the spring of 1861 I do not know specifically what the contracts were between Mr. Hanrick and Col. Gurley and Mr. Hale, but at that time, in March or April, an agreement was entered into of about this purport and effect: That Mr. Hale, Col. Gurley, and Hancock & West were to take charge of all Mr. Hanrick's business in relation to his titles to lands in controversy, wherever situated, to prosecute and defend any and all suits for the
508 maintenance of his title, and to do all — everything that att'ys might properly do to uphold and maintain his right to the lands, in consideration of which services so to be performed Mr. Hanrick undertook to pay two thousand dollars as a cash fee to Wm. Hale and Col. Gurley each and like sum of two thousand dollars to Hancock & West, and to give to them, the lawyers, one-third of the land that might be recovered or held by Mr. Hanrick. The engagement was to continue until the business was entirely concluded. That part of the fee in the land was contingent: the cash portion was a fee certain, to be paid at no special time, but as the business progressed and the att'ys might demand it.

Answer to 6th. I would say that in the condition that Mr. Hanrick's lands were with reference to adverse claimants, hostile settlers, and the heavy litigation that must be encountered that a contingent fee of one-third of the land that might be recovered by litigation, compromise, or fighting for it would be moderate, quite moderate, Mr. Hanrick so thought in his life, the last time I saw him, with an addition of $6,000 in cash as a fee certain.

Answer to 7th. I cannot say that there was any certain, fixed amount by usage or custom for a contingent fee. So far as my information on that subject extends contingent fees have varied in land litigation from one-fourth to one-third and in some instances one-half of the land, varying as the chance of recovery seemed more probable or remote, extent and character of litigation, etc.

Answer to 8th. I do not think the fee was excessive. I regard it as fair and reasonable and within the usage of contingent
509 fees at the time.

Answer to 9th. As before stated, Hancock and West's connection with Hanrick's business commenced in 1858. I understood Col. Gurley and Mr. Hale to have been acting for him in that capacity for some time before, and all continued in that relation till the time of his death. So far as I know, but little or nothing was done or attempted after the war commenced. The duties required were such as pertain ordinarily to att'ys, with addition of seeking to get and hold possession of the property, which was not all pleasant, because hazar- from the lawless and bloodthirsty disposition of the adverse occupants and claimants. For instance, we took possession of the lands in Williamson county, but the parties we put in possession were burned out in a few days and got off the land very promptly.

Answer to 10th. So far as I know, there was no material change in the condition of things at the time of Mr. Hanrick's death.

Answer to 11. Mr. Hanrick paid Hancock and West for their services rendered prior to the spring of 1861. I do not know whether the other att'ys had been fully settled with or not. At that time, the spring of 1861, a new arrangement for a joint contract with all his att'ys was entered upon. No part of the fee under the new arrangements, either land or money, was paid for Hancock and West. I do not know, but hardly think anything was paid under it to either Gurley or Hale; pretty certain none was, for reasons that will be hereafter stated.

510 Answer to 12. I feel I may best answer this question by stating just the form in which the contract of 1861 was left. As I recollect, as in fact I am quite confident that I prepared the contract myself in duplicate in the form, it was signed by Mr. Hanrick, by Col. E. J. Gurley, and by Hancock & West. Mr. Hale not being present, Mr. Hanrick took the two copies of the contract for the purpose of seeing Mr. Hale, on his return home to Alabama, and getting him to execute the contract, when he was to send one copy back to Hancock & West. I understood somehow, I cannot remember from what source, that Mr. Hanrick failed to meet with Mr. Hale and, of course, could not get his signature to the contract; at any rate, he never sent a duplicate of it to Hancock and West or they never rec'd it nor, as aforestated, was any part of the fee paid to them. The war coming on immediately thereafter practically suspended all business of this character, cut off or entirely obstructed communications, so that we had no further correspondence with Mr. Hanrick, nor did I ever see him afterwards. After the war, probably in 1867, young Mr. Hanrick, claiming to be the sole heir of Edward Hanrick, deceased, in company with Col. Gurley, approached Hancock and West on the subject of the business of his uncle's estate and proposed that they, Hancock & West, should go on with the litigation as contemplated by the contract of 1861, commenced with his uncle, with the modifications that the fee would be entirely contingent for the part of the lands recovered, no certain money for fee; that they, Hancock and West, to have one-third of the fee and Gurley the remainder, charged with what might be required to secure Mr. Hale's services, especially in the Supreme Court of the U. S., he having then, as I understood, left Texas and settled in New Orleans. The conference was carried on between
511 young Hanrick and myself in the presence of Col. Gurley.
I declined the proposition because I did not think it would compensate me for the services that I would be required to perform, and remarked to him that we, Hancock and West, leave the whole

matter with him and Col. Gurley; that the business would require a very large share of any lawyer's or law firm's time and attention, and that likely Col. Gurley could afford to do it for the fee proposed, but Hancock and West could not for one-third of that fee. Mr. Hanrick and Col. Gurley seemed entirely satisfied with this, and, the contract of 1861 never having been executed nor any part performed and no offer to perform it, I felt at perfect liberty to pursue its course indicated, and have not since had any connection with the business or know much about it.

Answer to 13th. This seems fully answered in the proceeding answer to interrogatory 12.

Answer to 14th. I have understood Col. E. J. Gurley has had the control and management of the estate of said the Hanrick; none of the business has been done in my presence and I cannot say anything about the manner and efficiency of my own knowledge; from Col. Gurley's character and ability as a lawyer and those I understand he had associated with him, I do not doubt it has been ably and efficiently attended to, as before stated. I think the business would require a large share of the time and attention of any lawyer or firms.

Answer to 15th. As a fee certain five thousand dollars per year and all traveling expenses paid I think would not have been excessive.

512 Answer to 16th. Col. Gurley was employed, as I learned from young Hanrick, by him. I only know from others that Col. Gurley has associated with himself other lawyers in different localities.

Answers to Direct Interrogatories Propounded by E. G. Hanrick.

Answer to 1st. I have already answered this in interrogatory propounded by E. J. Gurley.

Answer to 2nd. I have already answered this.

Answer to 3rd. And alike also to this.

Answers to Cross-interrogatories Propounded by Defendant Wharton Branch.

Answer to 1st. I have examined the paper referred to. I know all the parties appeared to it; all except Mr. Hanrick were lawyers.

Interrog. 2nd. Did you ever see any of the above parties, to wit, Edward Hanrick, E. Allen, W. G. Hale, F. H. Merrymance, and M. M. Potter, sign their names? And, if so, please examine the said contract and state, if you can, in whose handwriting the body of it is; whether or not the signatures were made by the parties themselves respectively or by some other person; if so, by whom.

Answer to 2nd. I have seen, I reckon, all of them; not positive that I ever saw M. R. Meryman sign his name, but I have corresponded with him and think I know his handwriting. I would judge, but I am not positive, the contract was in his handwriting; Edward Hanrick and Wm. G. Hale and F. H. Meryman's signatures

are in their respective handwriting; E. Allen's appears to
513 be, as stated by him, to have been written by W. G. Hale, and
M. M. Potter by F. H. Merryman.

Answer to 3rd. I believe I have fully answered this as regards any other contract made by Edward Hanrick in replies to direct interrogatories, except as to supposed contract with Wm. M. Walton. I have no knowledge of any contract made by Ed-ard Hanrick with Maj. Wolton.

Answer to 4th. I have examined the paper marked Exhibit B% and think it is the handwriting of W. G. Hale. I know nothing of the item of $200 referred to in regard to Saltillo from Devilla, of my own knowledge. I never had any papers in relation to the Davilla eleven leagues, as I now recollect.

Answer to 5th. Not to my knowledge has any one established the title to the M. Davilla grant. I only know from Edward Hanrick himself that he had failed to get the title papers properly authenticated from M. Davilla for the eleven leagues. He also told me that there was an agreement and understanding between him and Flint and Chambers, by which he was to be entitled with them in this grant, but in what proportion, if he told me, I have forgotten, they, Flint and Chamberlin, being in possession of same portion of the land under a deed from one Mrs. Lockhart, as I remember, who claimed the eleven leagues as the widow of one lawyer, but I had no special connection with the matter and know nothing more about it. I have — said that E. J. Gurley held any such contract as contemplated by the hypothesis. I have no knowledge as to his being required to end litigation in regard to
the M. Davilla. From the facts that Edward Hanrick told
514 me himself that after repeated efforts and expending a good
deal of money he had been unable to get a conveyance from
M. Davilla, and learning from other sources that Davilla had deed-the land to another, I doubt if there was ever any contract by E. Hanrick to recover this land for himself. I never saw the contract between young Hanrick and Col. Gurley and cannot speak as to its stipulations. As I remember the terms and stipulations of the contract drawn up in the spring of 1861, the att'ys would have been entitled to one-third of whatever land they might recover and as they recovered it. If they had failed to carry out their contract in good faith in any particular doubtless they would have been liable as other people from the damage resulting from the failure.

Answer to 6th. I have no personal knowledge of what he has recovered, but I have understood from various sources that he had recovered a good deal of the La Serda grant, ultimately determined, as I learn, to a part of it by a compromise with T. J. Chambers' estate. In that compromise my recollection is that Goodrich and maybe Oltorf and probably other lawyers acted for Chambers's estate. I had no personal connection with it and know nothing on the su-ject of my own knowledge. Hancock and West with others represented Chambers' estate in this contest in the circuit court of the United States at Austin, but had nothing to do with the compromise.

Answer to 7th. I have examined the letter dated Jan. 16th, 1874, from E. J. Gurley to W. P. Hale and interrogatories referred to. Walton and Gurley do not seem to appear as att'ys for either Edward G. Hanrick or for Edward Hanrick, deceased, but as
515 att'y for Edward G. Hanrick, administrator, etc. I know nothing about their employment further than stated of the employment of Gurley by E. G. Hanrick to attend to all matters in litigation affecting the interest of Edward Hanrick, deceased. The balance of this interrogatory, I think, I have fully answered and, I hope, to the full*y* satisfaction of the questions.

Answer to 8th. I think it was in the year 1873 when Hancock and West became att'ys for Chambers' estate in matter of the La Serda grant, but I have not the precise date in my mind at this moment.

Answer to 9th. In regard to the length of time Wm. G. Hale continued to be the att'y of Edward Hanrick, and whether or not he was the att'y for Edward G. Hanrick after the death of his uncle, I cannot answer of my own knowledge further than seeing interrogatories in behalf of Hanrick's estate in his handwriting. If I ever met Mr. Hale after Mr. Hanrick's death, I had no conversation with him on this or any other matter of business.

Answer to 10th. I have stated very circumstantially what occurred in my presence between myself and young Hanrick and Col. Gurley upon the subject of the contingent fee. I understood from both Gurley and Hanrick that he, Gurley, was employed for the fee and upon terms and conditions offered by young Hanrick. I was not called upon to witness the agreement, and if the contract was reduced to writing I never saw it.

516 Answer to 11th. As I have before stated, I have no personal knowledge of Col. Gurley's course of conduct in the multitudinous litigations affecting the Hanrick estate. I have had no connection with it, except the suit before referred to of Edward G. Hanrick, administrator, etc., *vs.* David Barton *et al.*, and, of course, cannot answer the balance of this interrogatory.

Answer to 12th. Whether or not Col. E. J. Gurley would, under his contract, if any, be entitled to claim the Rafeal Aguirrie league, in Falls county, etc., would or would not go to him, will just say I do not know the facts and do not feel called upon to conjecture what the law would be, but would venture to suggest but by placing the facts before the proper judicial tribunal a more effective decision may be obtained than would be the mere opinion of a witness.

Answer to 13th. If the compromise referred to is as badly expressed, with due regard to Lindley Murray and other grammarians, it might be very difficult to tell, and as I know nothing about the compromise, except from hearsay, I hardly feel competent to give any further answer to this interrogatory.

Answer to 14th. I do not think of anything further that might be material to either party.

Answers to Cross-interrogatories Propounded by Bardy and Ring, Attorneys for Michael Hanrick et al. and William Brady et al.

Answer to 1st. This interrogatory in answer to second direct interrogatory.

517 Answer to 2nd. I don't know how much respectively of the five leagues of land situated in Falls county and granted to Pedro Zarza and the eleven leagues in this county granted to De la Serda — claimed adversely to Edward Hanrick either previous to or after his death. I think the title to all, or nearly, was in some form or other claimed adversely. I cannot remember the names of the parties now, if I ever had them. You will see from my former ans. that I never had any connection with these grants or in any way acted as att'y in relation to them for Edward Hanrick, the contract before referred to embracing them failing, as before stated, to be executed, but from connection with the case of Edward G. Hanrick, administrator, *vs.* David Barton and others I learned that a large portion of the La Serda grant conflicted with a grant to T. J. Chambers, and the balance, I think mostly the rear or back portion of the La Serda, was in conflict with other colonists' grants, and maybe other adverse claimants, but the records will be more reliable than my recollection.

Answer to 3rd. Yes; the said contract referred to in the 5th direct interrogatory embraced the Pedro Zarza grant in Falls county.

Answer to 4th. Yes; and it embraced the De la Serda eleven-league grant in Falls.

Answer to 5th. Upon the state of facts supposed by this interrogatory I would state that I drew the contract myself, and with a
clear understanding *the* the title to the two grants referred
518 to, as also the Aguirrie grant, were to be litigated through
the courts of the last resort, and with the impression on my mind that the great body *if*, if not all, the land embraced by each of them would be involved in the litigation, and besides by the terms of the contract the att'ys were not only to act as lawyers but as agents of Edward Hanrick in all of these lands, who from his age and remote residence would be unable to give much of his personal attention, and the contract was so drawn that—at least that is my best impression—so that the attorneys would be entitled to one-third of all the land that might be secured and held for Mr. Hanrick under these several grants.

Answer to 6th. This contract was drawn up, as before stated, in March or April, 1861.

b. It was reduced to writing by myself.

c. It was signed by Edward Hanrick.

Answer to 7th. I had been employed previous to said contract by Edward Hanrick, since the latter part of 1858, with reference to the Aguirrie alone.

a. As to the length of time that E. J. Gurley and W. G. Hale had been employed I am not able to state, but am satisfied they had been for a number of years prior.

b. Yes; Hancock and West were paid for their services prior to the making of said contract; cannot now state exactly how much, but as much as a thousand dollars.

c. No; I rec'd nothing from Edward Hanrick for my services after said contract was made; never saw Mr. Hanrick nor heard from him after he left with the contract that had been drawn up.

519 *d.* Do not know whether Mr. Hale was paid anything.

Answer to 8th:

a. I have already named the tracts to which this agreement ref'd.

b. They were to receive their shares when the title should be established.

c. The att'ys would have been entitled to their share of each grant as the title to it was established.

d. It was not by the terms of said contract understood that the att'ys were to wait until all the litigation had ended and all their services had been performed, but the understanding was as just above stated.

e. They were to pay no part of the expenses of litigation but their own personal and traveling expenses.

Answer to 9th. I have just stated that I never had anything to do with these lands in Falls county as att'y of Edward Hanrick and do not know who were the litigants opposed to him at the time of his death.

Answer to 10th. I had no interest to assign and made none, but merely declined to accept the fee proposed and left the whole matter with young Mr. Hanrick and Col. Gurley.

Answer to 11th. I know nothing on the subject of Hale's making any such assignment.

Answer to 12th. I have fully stated heretofore when my last services in behalf of Edward Hanrick were rendered, etc.

Answer to 13th. I have already stated why I did not con-
520 tinue in the services of Edward Hanrick.

Answer to 14th. I have no knowledge whatever of the service rend. by the attorneys and can therefore form no opinion on the subject; have had no personal nor professional connection with the litigation nor been in attendance at the court where it is said to have pended. I have already stated the facts upon which I *per*dicated my premises to *to* 14th and 18th direct interrogatories.

JOHN HANCOCK.

Sworn to and subscribed before me this 7th day of Oct., A. D. 1884.

W. S. WALTON,
Notary Public, Travis Co., Texas.

THE STATE OF TEXAS, }
Travis County. }

I, N. S. Walton, notary public within and for the above county and State aforesaid, do hereby certify that the above and foregoing answers of John Hancock, the witness before named, were made before me and were subscribed and sworn to by him before me.

Given under my hand and notarial seal at Austin this 7th day of Oct., 1884, A. D.

N. S. WALTON,
Notary Public, Travis Co., Texas.

521 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
No. 52. In Equity.

DECEMBER 10TH, 1888.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First. It appearing to the court that on the rule day in January, 1888, the defendant- John B. Sargent and Wharton Branch had failed to appear and answer in accordance with the order of the court entered on the 6th day of December, 1887, and order *pro confesso* having been entered in the clerk's office against them in the order and rule book, it is now ordered, adjudged, and decreed that said decree *pro confesso* as to said defendants, Branch and Sargent, be, and the same *be*, confirmed, and as to said defendants last named the allegations in complain*t*ants' bill be taken as confessed, and that the rel*eif* therein prayed for against said defendants be granted, and it is therefore adjudged and decreed by the court that the title of said complain*t*ants in and to all of said lands hereinafter described and referred to be established as against said Branch and Sargent, and that the claims of the said Branch and Sargent be, and the same *is* hereby, annulled and cancelled and the cloud upon the title to same cast by said claim is hereby removed, and the title of complain*t*ants is quieted in respect thereto. It is also ordered and decreed by the court that said complain*t*ants have and recover of the said Whorton Branch and John B. Sargent all costs as to them in this behalf incurred.

522 Second. The court finds from the pleadings, exhibits, and evidence that in March, 1861, Edward Hanrick claimed to own title to the Antanacio de le Serda eleven-league grant, situated in Falls county; the Pedro Zarza five-league grant, situated in Falls county, and the Raphael de Aguirie grant of one league, situated in Falls county, and the Raphael de Aguirrie grant of ten leagues, situated in Williamson county; the Andrew Weaver one-league grant, situated in Liberty county, and the one-half league in the name of Rumayez Grant, also situated in Liberty county.

The court further finds that large portions of each of said tracts of land were occupied by many different persons, claiming under titles adverse to said Edward Hanrick. The court further finds that for the purpose of establishing his title and securing the possession of said lands the said Edward Hanrick employed the law firm of Hancock and West, W. G. Hale, and E. J. Gurley, attorney-at-law, to prosecute and defend all suits relating to said lands, said employment to continue until the business should be disposed of, and as for compensation for said services the said Edward Hanrick agreed and bound himself to convey to said attorneys one-third of all of said lands that should be recovered for the said Hanrick. The court also fi*l*ds that the cross-complain*t*ant herein, E. J. Gurley, has, since the date of said contract, in person and aided by counsel employed by him, performed the services contemplated by said contract, and had on the — day of ——, 1877, recovered and settled the title and possession of a large part of the said La Serda grant, and on the — day of ——, 1874, had recovered the title and possession of a large part of the said Zarza grant, and the litigation as to said grant was before the institution of this suit finally settled. The court further finds the said E. J. Gurley is still engaged in the 523 litigation concerning the said Raphael De Aguirrie grant of eleven leagues, and that as to said last-named grant the same is adversely occupied by persons not parties to this suit.

And the court further finds the said Edward Hanrick died on the — day of December, 1865, unmarried and without issue; that he left surviving him the defendant E. G. Hanrick, nephew; John Hanrick and James Hanrick, brothers, and Elizabeth O'Brien, a sister; that John Hanrick died in 1870 without issue and unmarried; that James died on the — day of ——, 1875, and left surviving him the complain*t*ant- herein, to wit, Nicholas Hanrick, Annie Hanrick, Elizabeth Clare, Catherine O'Neil, Bridget Whelan, Mary Whelan, Robert Whelan, Eliza Whelan, as his only heirs. It is therefore ordered, adjudged, and decreed by the court that the aforesaid contract made by the said Edward Hanrick, deceased, with the said attorneys and the right of the said E. J. Gurley to the compensation stipulated for in said contract is hereby established and confirmed as against all other parties to this suit and those claiming under them by right derived since the institution of this suit.

Third. It is further ordered, adjudged, and decreed that the defendant herein, E. G. Hanrick, is entitled as heir of said Edward Hanrick, deceased, to an undivided two-ninths interest of the lands pertaining to the estate of Edward Hanrick, deceased, and herein described as referred to; that said complain*t*ants, to wit, the said Annie Hanrick, Ellen Hanrick, Nicholas Hanrick, Elizabeth Clare, Catherine O'Neil, Mary Whalen, Bridget Whalen, Robert Whalen, and Eliza Whalen, are entitled as heirs of said James Hanrick, deceased, to an undivided two-ninths of the lands pertaining to the same, and that the defendants Philip O'Brien, William Brady, W. E. Kendall, and W. A. Patrick, as administrators of the estate 524 of Eliza M. O'Brien, deceased, are entitled to two-ninths of the lands pertaining to the same, subject to such conveyances they or either of them may have executed in favor of said William Brady and William E. Kendall.

Fourth. And it appearing to the court that the complain*t*ants, by their bill, and the defendants E. G. Hanrick and E. J. Gurley, by their cross-bill, pray for partition of said land jointly held by them, it is therefore ordered, adjudged, and decreed by the court that said lands on said De la Serda grant and on said Pedro Zarza grant, in Falls county, recovered as aforesaid for the said Edward Hanrick, deceased, and lands in Liberty county, hereinbefore referred to, be partitioned and divided among several part owners in accordance with their several shares, viz: To E. J. Gurley, one-third part; to said complain*t*ants herein, two-ninths part, and to said defendants, Philip O'Brien, William Brady, W. E. Kendall, and W. A. Patrick, administrator- of the estate of Eliza M. O'Brien, deceased, two-ninths, and to the defendant E. G. Hanrick, two-ninths.

Fifth. And it appearing to the court that the said Raphael de Aguirrie ten-league tract, in Williamson county, is adversely occupied by persons not parties to this suit, it is ordered, adjudged, and decreed that partition as to said lands is denied and that the said joint owners continue to hold their shares undivided.

Sixth. It is further ordered that A. S. Lathrop, Esq., standing master of this court, be, and he is hereby, appointed to make partition of said land as herein adjudged and to pass upon and report the claims set up by the parties respectively for rents, damages, and contributions and for taxes and costs paid, and he is instructed as follows, viz: 1st. To so divide and partition said lands that the portions of the same sold and conveyed by any part owner thereof to third persons shall be included in the share allotted to such
525 part owner if the share of such part owner be sufficient to
contain all of the tracts conveyed by him, but the value of said improvements on said lands, if any, shall not be estimated as part of the value of the land. 2nd. As to the tracts of land occupied and improved by the defendants E. J. Gurley and E. J. Hanrick, the same shall be set apart to them if it can be done without prejudice to the other part owners, and the improvements on the said tracts of land shall not be estimated or considered as part of the value of the land.

3rd. As to the portions of said tracts of land improved in consideration of the use and occupation of the same by parties making said improvements, the value of such improvements shall be considered and accounted for in said partition.

4th. As to the lands conveyed by the defendant Hanrick in compromise settlement with adverse occupants and claimants, as shown in the agreed statement of facts on file herein, *in* the same shall, in accordance with the prayer of complain*t*ants and the defendants claiming under Elizabeth O'Brien, be set aside to and *for*m a portion of the lands allotted to the defendant Hanrick, but without charge to him and no value be placed on the same.

5th. It appearing to the court by agreement of all the parties to this suit on file that the defendant William Brady has conveyed by deed to Goodrich & Clarkson fifteen hundred and twenty acres, a part of the Aguirrie one league of land in Falls county, by deed dated — day of —— and recorded in the records of Falls county, Texas, and that the same lands have also been conveyed to other persons by the defendants Hanrick and Gurley, and it also appearing from this agreement that said fifteen hundred and twenty acres

of land no longer constitute any part of said estate or the
526 property of any of the parties to this suit, the special master
will take no account of the same; and it further appearing to the court that nearly all the remaining portions of said Aguirrie league are in possession of parties holding under either complain*t*ants or defendants, or both, said special master is instructed to partition the same in such manner that the tracts allotted to either party shall contain the tracts of land sold by them, and in case where the same tract has been sold by both parties preference shall be given to the earliest sale.

6th. Should it be found that the land allotted to defendant E. G. Hanrick shall be insufficient to cover the lands sold by him, then in such event the special master shall ascertain whether or not the defendant Gurley participated in the proceeds of such sale; and if it be ascertained that he did, then as to the interest received *received* by him in such tracts the same shall be charged to the share of the defendant Gurley to the extent of his participation in such proceeds, and no portion of the lands sold by either the defendant Gurley or the defendant Hanrick or by both of them shall be allotted to or made a part of the land set aside to complain*t*ants or to the defendants claiming under Elizabeth O'Brien, except in cases where third parties in possession hold under contract from both sides, in which event such tracts of land shall be allotted to either party, as may seem the more just and equitable.

7th. It is further ordered that the special master or any party to this cause may apply for such orders as may be necessary for carrying the decree into execution.

In open court December 10th, 1888.

DON A. PARDEE,
Circuit Judge.
A. P. McCORMICK,
Dist. Judge.

527 The foregoing is endorsed as follows, to wit: No. 52. Eq.
Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.*: Decree. Filed Dec. 12, 1888. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

528 In the U. S. Circuit Court for Northern District of Texas, at Waco.

NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} No. 52. Chancery.

And now comes A. S. Lathrop, standing master in chancery for the northern district of Texas, to whom was referred certain matters in the above entitled and numbered cause by decree of this court of date Dec. 10, 1888, and would respectfully make report of his acts and doings in the premises.

On the — day of February, 1889, he notified the solicitors of all the parties to this suit that he would hold his first meeting to enquire into the matters referred to him at the U. S. court-room, in the city of Dallas, Texas, on the 6th day of March, 1889, at 10 o'clock a. m. Said notice was given by mailing said notice to said solicitors. At said time and place there appeared before me H. F. Ring, Esq., solicitor for plaintiffs; John T. Brady, Esq., solicitor for the defendants representing the heirs and assigns of Elizabeth O'Brien; L. W. Goodrich, Esq., representing the defendant E. G. Hanrick, and E. J. Gurley, Esq., representing himself, and the same persons were present at the other meetings held by me. At said meetings I proceeded to take the testimony offered by the parties, a synopsis of which is herewith filed, marked Exhibit A, and made a part of this report.

Two of our meetings were held at Marlin, Falls county, Texas, the first in April and the last in July. Upon the last occasion we made a trip to the Zarza grant, and, in company with said solicitors, spent two days in riding over said grant and examining land so as to place a proper valuation on the different parts of the same, and
while on the said last trip, by the consent of all the
529 solicitors, I employed F. O. Porter, the county surveyor of Falls
county, to make certain surveys on said grant and report
under oath to me. I herewith file his report and the *the* map he made, marked Exhibit B, and make the same a part of this report. After hearing the evidence, arguments of the solicitors, and examining the authorities to which I had been referred I find as follows: That the plaintiffs and the defendants, the heirs of Elizabeth O'Brien, are not entitled to any compensation from E. G. Hanrick and E. J. Gurley for rents for any portion of said lands, for the reason that the said parties never received any rent for any of said land, and that they could not have rented any of same to advantage. I find that the defendant E. G. Hanrick, in managing said lands, before the commencement of this litigation, paid out for the benefit of the lands in Falls and Liberty counties, embraced in this suit, for costs and taxes, the sum of $17,911.86, as will appear from Exhibit C, filed herewith and made a part of this report.

For which advances he is entitled to reimbursement from the respective parties according their interest in these lands. I find, further, that the defendant E. J. Gurley has paid to said E. G. Hanrick his one-third part *part* of said costs and taxes. I also find that of said costs and taxes $10,000 should be charged to the Zarza grant and $7,911 and 86 cents to the La Serda grant. All the expense- of costs and taxes are charged to these two grants because as hereinafter shown. Such disposition is made of the Aguirrie land in Falls county and the lands in Liberty county that I could not make any assessment on them.

On the Zarza grant the share of taxes and costs to be paid by the plaintiffs and the heirs of Elizabeth O'Brien on each $\frac{2}{9}$ or each
$2,222.22.

530 And on the La Serda the share of taxes and costs due from
plaintiffs & the heirs of Elizabeth O'Brien are each $\frac{2}{9}$ or each
$1,758.19, which amounts I deduct from their shares in the re-

spective grants and add the same to the share of the defendant E. G. Hanrick.

For the sake of convenience, the parties, with my consent, after having made a map of the land of the Zarza grant, divided the same into blocks marked A, B, C, & D, which blocks are designated on said map by blue lines marked around said blocks and the letters of the said blocks made in the same. The map also shows the different tracts sold by the parties herein to the persons purchasing the same, and also the unsold tracks. Said map is herewith filed, marked Exhibit D, and made a part of this report:

I then proceeded to value the different tracts of land on the Zarza grant as the same appears on said map, which valuation will appear in Exhibit E, herewith filed and made a part of this report:

The total valuation of all of said land in said grant or valued by me amounts to the sum of............	$153,409 25
Of this amount the plaintiffs are entitled to as their share $\frac{2}{9}$, or..............................	34,090 94
Less their share of costs and taxes allowed E. G. Hanrick......	2,222 22
	$31,868 72
E. J. Gurley's share of said land is $\frac{1}{3}$ of its value, or.......................................	51,136 41
The share of the heirs of Elizabeth O'Brien in said lands is $\frac{2}{9}$, or..	34,090 94
Less their share of costs and taxes allowed E. G. Hanrick....................................	2,222 22
	$31,868 72
531 The share of E. G. Hanrick in said land is $\frac{2}{9}$, or.	34,090 94
Add to this the amount due from plaintiffs and the heirs of Elizabeth O'Brien for taxes and costs paid by him	4,444 44
Add to this also the amount allowed to him for improvements on the farm and pasture lands in block D, allowed to plaintiffs and charged to them......	3,721 50
	$42,176 17

I also find that E. J. Gurley received from E. G. Hanrick one-third of all the money received by E. G. Hanrick for the sale of lands in the Zarza grant.

I then proceeded to make allotments of the lands in said grants according to the decree of the court, as follows:

To E. G. Hanrick:

The land in blocks A, B, C, and D designated in Exhibit E as land sold by Hanrick & Gurley and numbered in said Exhibit

Nos. 1 to 25, inclusive, 48 to 55, inclusive, 93 to 102, inclusive, & No. 108.

For a description of said lands see the map filed herewith and marked D, valued at.	$51,943 00
Of this amount ⅓ is to be charged to E. J. Gurley. . . .	17,314 33
	34,628 67
I also allot to him out of block D 754¾ acres, the same being a part of the unsold land in said block on which is situated the said E. G. Hanrick's farm, a part of No. 109.	7,547 50

For a description of this last-named tract see the map made by Mr. Porter, the county surveyor of Falls county, Texas, herewith filed, marked Exhibit B.

This leaves due to E. G. Hanrick the sum.	$80 71

To E. J. Gurley:

He is chargeable with ⅓ of the value of the lands in blocks A, B, C, & D, designated in Exhibit E as 532 sold by Hanrick & Gurley, $51,296.36.	$17,314 33
Allotted to him out of block B, as is shown in Exhibit E, of the unsold land marked A & No. 88, 268 acres of cedar land, as per agreement of all parties, at $15 per acre.	4,020 00
Also 3,340 acres out of block C, No. 104, in Exhibit E, west of Brazos river, in this tract in E. J. Gurley's farm	26,720 00
Also 200 acres of land out of said block C, being a part of the unsold land No. 105, Exhibit E, including said Gurley's ranch improvements.	2,000 00
Also, of the unsold land in block B, 205 acres marked B in said Exhibit E & No. 89 in said exhibit.	1,230 00
Leaving amount due by E. J. Gurley	$147 92

For a description of the above land see map Exhibit D & also Exhibit F, herewith filed and made a part of this report.

To the heirs and assigns of Elizabeth O'Brien I allot the lands designated in Exhibit E as tracts sold by William Brady out of blocks A & B, value and numbered in said exhibit Nos. 26 to 43, inclusive, & 56 to 87, inclusive.	$26,850 90
533 And also of the lands in block B, marked in Exhibit E as unsold and designated by the letters C & M & Nos. in said exhibit 90 & 92.	2,988 00
Also 200 acres in block C, designated in Exhibit E as No. 103 unsold lands.	2,000 00
	$31,838 90
Leaving amount due them.	$27 62

For a description of said lands see map Exhibit D, filed herewith as a part of this report.

To plaintiff I allow the lands in block A, designated in Exhibit E as unsold and numbered 44, 45, 46, & 47..	$1,863 25
Also of the unsold land in block B, marked in Exhibit E as H, 66.7 acres, and No. 91, value.............	733 70
1,200 acres of the unsold lands in block C, a part of No. 105, being the balance of the land in said block C unsold & not allotted to the other parties.......	12,000 00
Also 330 acres in block D, part of No. 109, in Exhibit E, in shape of a triangle, as shown in Exhibit B on the map made by Mr. Porter..............	3,300 00
534 Also 721 acres in block D, known as Hanrick's pasture	7,210 50
Improvements on same...........................	721 50
300 acres out of the east end of Hanrick's farm in block D, No. 109.............................	3,000 00
Improvements on the same......................	3,000 00
	$31,828 95
Balance due them........................	$39 77

I also set apart to E. G. Hanrick the lands in block B and designated in Exhibit E in compromise Nos. 106 & 107 without valuation or charge to said Hanrick, as the same were conveyed to said Duty & Ruble in the way of compromise.

I then proceeded to value the lands in the De la Serda grant, as the same appears on the map filed herewith, marked Exhibit G, and made a part of this report, it being agreed by all the parties in interest that said map is a correct map of said land.

My valuation of said lands will appear in Exhibit H, herewith filed and made a part of this report.

My valuation of said land is......................	$126,090 88
Of this amount the plaintiffs are entitled to as their share $\frac{2}{9}$, or....................................	28,020 19
Less their share of costs & taxes paid by E. G. Hanrick.....................	1,758 19
	$26,262 00
Of this amount E. J. Gurley is entitled to his share, $\frac{1}{3}$..............................	42,030 29
535 Of this amount the heirs of Elizabeth O'Brien are entitled to as their share $\frac{2}{9}$, or..........	$28,020 19
Less their share of costs & taxes paid by E. G. Hanrick....	1,758 19
	$26,262 00

Of this amount E. G. Hanrick is entitled to $\frac{2}{9}$, or....	$28,020 19
To this amount add the amount of costs & taxes due from plaintiff & heirs of E. O'Brien....	3,516 38
	31,536 57

Allot to E. J. Gurley—he is chargeable with $\frac{1}{3}$ of the value of the lands designated in Exhibit H as sold by Hanrick and Gurley, $30,734.57—$\frac{1}{3}$...........	10,244 85
Allot him the lands described in Exhibit H as parties in possession by consent of H. & G. & Nos. 63 to 86, inclusive..............	14,763 50
Also allot him an undivided interest of 360 acres of land out of the 1,625 acres sold to Goodrich & Clarkson, No. 62; also allot him the land as shown in Exhibit H as unsold and numbered 130, 132, 135, 136, 138, & 139 to 145, inclusive............	13,810 67
	42,012 77
Balance due him........................	17 52

For a more full description of these lands see Exhibit G,
536 filed herewith.

To the heirs and assigns of Elizabeth O'Brien I allot the lands described in Exhibit H, filed herewith, as lands sold by the "alien heirs," and numbered in said exhibit as Nos. 87 to 109, inclusive..........	$26,725 58

Which exceeds their share in the sum of $463.58, which I deduct from the share due plaintiffs.

To E. G. Hanrick I allot the lands described in Exhibit H as the lands sold by Hanrick & Gurley, Nos. one to 61, inclusive, which are valued at.....	$30,734 57
Of this amount $\frac{1}{3}$ is chargeable to E. J. Gurley.......	10,244 85
	$20,489 72
I also allot to him out of the 1,625 acres marked in Exhibit H as sold to Goodrich & Clarkson, No. 62, 1,260 acres................................	$11,025 00
Leaving due him........................	$21 85

For a description of these lands see Exhibits G & H.

To the plaintiffs I allotted of the unsold lands marked in Exhibit H as Nos. 110 to 129, inclusive, also Nos. 131, 133, 134, & 137..........................	$25,837 46
Due them	$39 04

For {a more full description of said lands see Exhibit- G & H filed herewith.

In regard to the one league of the Aguirrie land in Falls county, Texas, which I was ordered to partition among the parties in interest, I would report that the parties, both plaintiffs and defendants, have entered into a written agreement, signed by the parties or their solicitors, & by which they divide the same to their satisfaction. Said agreements is herewith filed, marked Exhibit K, 537 and made a part of this report, and I hereby approve said report and partition said league of land among the said parties as per agreement.

In regard to the one and one-half league of land in Liberty county, Texas, which I was ordered to partition by the request of all the parties to this suit, I would report that they wish to withdraw the same from partition, and that some one be appointed by the court to sell and convey said lands, and that the proceeds of said sale be divided among the parties in accordance with their interest, as established by the decree of this court. I would therefore request that their said wish may be granted.

I would further report that I have been engaged in attending to the matters referred to me herein about — days, and that my trip to Marlin, as above stated, cost me in money $33.50, and that I have paid out in clerk's hire $——, and I would ask the court to allow me the said amount of money paid out by me and the sum of $—— as compensation for my services as master in chancery in this case.

I also employed Mr. Porter, the county surveyor of Falls county, Texas, by the consent of all parties hereto, to make certain surveys of the Zarza grant, as before stated, for which he charges $75.50, which fee I consider reasonable and just, and I have approved the same, and I would ask the court to allow the same as a part of the costs in this case; all of which is respect*ive*ly submitted.

A. S. LATHROP,
Standing Master in Chancery.

The foregoing is endorsed as follows, to wit: No. 52. Chancery. Nicholas Hanrick *et als. vs.* E. G. Hanrick *et al.* Master's report. Filed Oct. 8, 1889. J. H. Finks, clerk, by Chas. H. Lednum, dep.

538 In U. S. Circuit Court for the Northern District of Texas, at Waco.

N. HANRICK *et al.*
vs. } No. 52. Chancery.
E. G. HANRICK *et al.*

And now comes A. S. Lathrop, standing master in chancery, and, leave of the court first had and obtained, files this his supplemental report to his original report filed herein on the 8th day of Oct., 1889, and would respectfully represent that in his original report thereto, through inadvertence, his attention not having been called thereto by the parties in interest, he failed to make partition of the following tracts of land, situated on the La Serda grant, in Falls county, Texas, viz:

1st. One tract of 396 acres of land, marked on the map as unsold land and No. 20.

2. One tract, designated on the map as the Geo. Sthal 100-acre ract.

3. Also an 80-acre tract on the Little Sandy creek, known on the tmap — the F. A. Curry tract.

4. Also a 35-acre tract, designated on the map as the Floyd Smith tract.

5. Also one other tract of 100 acres, known as the L. D. Forbes tract.

6. Also another tract of 212 acres on Big creek, known on the map as the Sam. Parsons tract.

7. Also a tract of 40 acres of land, known and designated on said map as the R. M. Loggins tract.

8. Also a 20½-acre tract of land, known on said map as the F. E. Smith tract.

9. Also an 108½-acres tract of land, known on said map as the H. L. Parton tract.

10. Also a tract of 28 acres, known on said map as the A. F. Fairy tract.

11. Also another tract of land containing 95 acres and
539 designated on said map as the S. L. Parson, Jr., tract. Nos.
8, 9, 10, & 11 are included within the field-notes of the J. L. & John la Prelle purchase as marked on said map.

12. Also another tract of 40 acres of land, known on the said map as the Jim Smith tract.

The map referred to above is the map filed with my original report and marked Exhibit —.

From the evidence submitted to me I value said lands as follows, viz:

Lot 1,	at $5.66⅔	per acre	$2,187 33⅓
" 2,	" 6.00	"	600 00
" 3,	" 5.60	"	448 00
" 4,	" 5.33⅓	"	186 66⅔
" 5,	" 5.00	"	500 00
" 6,	" 4.00	"	848 00
" 7,	" 6	"	240 00
Lot 8,	at $6.00	per acre	123 00
" 9,	" 6.00	"	651 00
" 10,	" 6.00	"	168 00
" 11,	" 6.50	"	527 00
" 12,	" 6.00	"	240 00
Total value			$6,719 50

Of the above amount E. J. Gurley is entitled to ⅓....		$2,239 83⅓
E. G. Hanrick, $\frac{2}{9}$..............................		1,493 $22\frac{2}{9}$
Heirs of E. O'Brien, $\frac{2}{9}$		1,493 $22\frac{2}{9}$
The plaintiffs, $\frac{2}{9}$..............................		1,493 $22\frac{2}{9}$
E. G. Hanrick's share is..........................		1,493 $22\frac{2}{9}$
I allot to him lots 3, 5, & 11, value		1,475 00
The amount due him		18 22
540 E. J. Gurley's share is......................		$2,239 83⅓
Allot him lots Nos. 4, 6, 7, & 12...	$1,514 66⅔	
Also 131 acres of land out of lot 1, a description of which is hereto attached, marked Exhibit A................	742 33⅓	
		2,257 00
The amount over his share.............		17 17
The heirs of E. O'Brien share....................		1,493 22
Deduct from this their indebtedness to pl't'ffs on first exhibit..................................		463 58
		1,029 64
Allot to them lots 8, 9, & 10.........		942 00
This amount due them....................		87 64
The share of pl't'ffs............................		$1,493 22
Add to this the amount due them on last exhibit and deducted from share of E. O'Brien.............		463 58
		1,956 80
Allot to them lots No. 2................	600 00	
Also 255 acres of land out of No. 1, a description of which is hereto attached, marked Exhibit A.................	1,445 00	
		2,045 00
The amount over his share................		$88 20

541 I would further report that in the partition of the Zarza grant as contained in my original report the lands set apart to E. G. Hanrick, except the 754 acres in block D set apart to him, were sold by E. G. Hanrick prior to the institution of this suit, and also the compromise land was set apart to him without charge.

All of which is respectfully submitted.

A. S. LATHROP,
Standing Master in Chancery.

The foregoing is endorsed as follows, to wit: No. 52. Chancery. N. Hanrick *et al. vs.* E. G. Hanrick *et al.* Supplemental report of master. Filed Nov. 4th, 1889. J. H. Finks, clerk.

542 Amount allowed E. G. Hanrick for taxes paid by him on lands in Falls county & Liberty county, Texas, for which the parties to this suit are liable in proportion to the respective interests.

Taxes on Falls county land for the year 1871, paid Feb. 10, 1873	$1,626 33
Taxes paid July 10, 1866	200 00
“ on the Aguirrie land, 1869	387 55
“ “ Falls county land, 1869	548 30
“ “ “ 1870	334 81
“ “ “ 1872	300 00
“ “ “ 1867	223 83
“ “ all lands, 401 “ convention tax, 200.40 } 1868	300 70
“ on Falls county lands, 1873	385 02
“ “ “ & costs, 1877	431 86
“ “ Falls Co. lands, 1878	634 76
School tax, “	107 01
Taxes on Falls county lands, 1879	570 44
“ “ 1880	709 40
“ “ 1875	1,038 35
Costs on above	13 50
Taxes on Falls county lands, 1874	1,599 53
Costs on above	37 49
Taxes on De la Serda land, 1877	270 00
Costs	6 20
Taxes on Liberty county lands, 1871	33 32
“ “ 1869	4 99
Railroad tax, Falls county, 1869	1,998 04
“ “ 1867	14 94
	11,676 37

543 Amount allowed E. G. Hanrick for costs paid for the benefit of the lands in Falls & Liberty counties for which the parties to this suit are liable in propo-tion to their interests.

1872.	Paid jury fee	$3 00
	“ Geo. King executing writ of possession	5 00
	Costs in justice's court	17 00
	“ constable's costs	3 00
“	“ expense in taking R. Moore's deposition	10 00
1873.	“ notary taking depositions	12 25
	“ witness fees, $3.10; recording judg't, 1.35	4 45
	“ Coleman, messenger & witness	5 50

1874.	Costs notary taking deposition	8 70
	“ *costs* in Hanrick *vs.* Thompson	10 65
	“ for obtaining service in said cause	15 00
	“ *cost* bill, $20, & taking depositions 45.35	65 35
1876.	“ *cost* in suit *vs.* Thompson	3 00
	“ for surveying 400 acres of land	7 37
	“ recording Lane's deed	1 00
1877.	“ for Jackson transcript	40 00
1878.	“ ½ *costs* Lane's survey	5 87
	“ *costs* Wescot for survey	2 50
	“ tax injunction suit	2 55
	“ Hart clerk *costs*	17 50
1880.	“ *costs* suit *vs.* McKorkle	6 80
1882.	“ mandate, Jackson suit	39 00
1885.	“ U. S. court at Austin	3,000 00
	“ for transcript on writ of error to U. S. Supreme Ct	600 00
	“ *costs* in U. S. Supreme Court	600 00
	“ L. W. Goodrich for looking after lands for 7 years, at $250.00 per year	1,750 00
		6,235 49

The foregoing is endorsed as follows, to wit: No. 52. Chancery. N. Hanrick *et al. vs.* E. G. Hanrick *et al.* Exhibit C, master's report. Filed Oct. 8, 1889. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

544 *Valuation of the Lands in the Pedro Zarza Grant, as Testified to by Witnesses and Fixed by the Master.*

Tracts sold by Hanrick & Gurley in block A.

No.	To whom sold.	No. of acres.	Master's valuation.	
			Per acre.	Amounts.
1	Edward McCullough	184	6 00	With these first 25 tracts also all the other tracts designated on map, Exhibit D, as in block A, and which are not shown in this exhibit as sold by Wm. Brady and designated as unsold land, aggregating 5,966 acres.
2	"	100	"	
3	W. J. C. Graham	98	"	
4	Matilda, G. W., & L. F. Bowman	200	"	
5	W. A. & Leander Fiser	134	"	
6	Cotton Wood church	5	"	
7	Rob't Delgraffenried	150	"	
8	L. F. Bowman	118	"	
9	Geo. W. Cleming	100	"	
10	M. B. Maxey	138.8	"	
11	R. H., H. R., & Jos. Jones	186.3	"	
12	R. H., H. R., & Jas. Jones	235	"	
13	L. Mager	403	"	
14	H. J. Derring	246.3	"	
15	Newton C. Nix	60	"	
16	Ed. McCullough	600	"	
11	W. J. C. Graham	155	"	
12	H. J. Deering	284	"	
13	W. K. Brandon	72	"	
14	S. McCarter	106	"	
15	Mrs. Eliza Martin	166	"	
16	Ed. McCullough	202	"	
17	Geo. W. Bowman	100	"	
18	F. J. Smalley	56⅓	"	
19	Ed. McCullough	84	"	
20	E. T. Wiggins		"	
545	*Tracts Sold by H. & G. in Block A.*			
21	Wm. O'Briant	113½	6 00	
22	John T. Bowman	142½	"	
23	B. W. Smith		"	
24	C. Kranz	50	"	
25	B. W. Smith	180	"	35,796 00

Tracts Sold by Wm. Brady in Block A.

	To whom sold.	No. of acres.	Gurley's valuation.	Pierson's valuation.	Master's valuation.	
					Per acre.	Amounts.
26	A. J. Merrell	100	6 00	12 00	6 00	600 00
27	J. F. Prince	48.4	"	"	"	290 40
28	J. W. Pool	50	"	"	"	300 00
29	J. W. Watson	50	"	"	"	300 00
30	Tom McCullough	36.5	"	"	"	219 00
31	P. S. Bruner	50	"	"	"	300 00
32	G. W. Bowman	50	"	"	"	300 00
33	G. L. Sevier	100	"	"	"	600 00
34	Geo. Nix	50	"	"	"	300 00
35	D. A. Nix	50	"	"	"	300 00
36	V. C. Golding	50	"	"	"	300 00
37	J. T. Hewstey	50	"	"	"	300 00
38	S. Drake	49	"	"	"	294 00
39	W. J. Berry	49	"	"	"	294 00
40	W. E. Berry	49	"	"	"	294 00
41	L. F. Bowman	63	"	"	"	378 00
42	J. B. Appleby	23	"	"	"	138 00
43	School-house	7.5	"	"	"	45 00
		925.4	....	....	....	5,552 40

546 *Unsold Tracts in Block A.*

No.	Tracts designated.	No. of acres.	Gurley's valuation.	Pierson's valuation.	Master's valuation.	
					Per acre.	Amount.
44	G	45	5 00	12 00	8 50	382 50
45	I	40	5 00	12 00	"	340 00
46	F	72	7 50	12 00	9 75	702 00
47	E	45	"	"	"	438 75
		202	....	....	....	1,863 25

Tracts Sold by H. & G. in Block B.

	To whom sold.					
48	B. F. Kiersey	75	6 00	12 00	9 00	675 00
49	L. D. Kiersey	75	"	"	"	675 00
50	P. Kiersey	132	7 00	"	9 50	1,254 00
51	J. O. Brewer	105	6 00	"	9 00	945 00
52	I. B. Evans	100	10 00	"	11 00	1,100 00
53	I. V. Eubanks	100	"	"	"	1,100 00
54	Mary Meyers	100	6 00	"	9 00	900 00
55	—— Blackman	100	"	"	10 00	1,000 00
		787	....	....	....	7,649 00

Tracts Sold by Wm. Brady in Block B.

56	J. W. Wren	200	6 00	12 00	9 00	1,800 00
57	I. V. Eubanks	50	“	“	“	450 00
59	J. F. Gressom	106	“	“	“	954 00
60	W. T. & S. S. Gresham	100	“	“	“	900 00
61	Jas. Gresham	100	“	“	“	900 00
62	J. W. Cook	200	“	“	“	1,800 00
63	J. B. Taylor	92.5	“	“	“	832 50
64	J. W. Taylor	50	“	“	“	450 00
65	W. P. Hammock	50	“	“	“	450 00
66	J. S. Barton	55	“	“	“	495 00
67	J. W. French	50	“	“	“	450 00
		1,053.5				9,481 50

547

Tracts Sold by Wm. Brady in Block B.

No.	To whom sold.	No. of acres.	Gurley's valuation.	Pierson's valuation.	Master's valuation. Per acre.	Master's valuation. Amounts.
68	Sam. French	50	6 00	12 00	9 00	450 00
69	J. Hammock	50	“	“	“	450 00
70	Thos. Baker	50	“	“	“	450 00
71	Schultz & Shephard	59	“	“	“	531 00
72	Sam. Schultz	59	“	“	“	531 00
73	J. F. Ponder	48.4	“	“	“	435 60
74	A. J. Ponder	48.6	“	“	“	437 40
75	W. F. Martin	69.5	“	“	“	625 50
76	R. W. Martin	69.5	“	“	“	625 50
77	A. A. Dunlap	50	“	“	“	450 00
78	J. W. Dunlap	50	“	“	“	450 00
79	C. L. Ayles	140	“	“	“	1,260 00
80	J. W. Brown	75	“	“	“	675 00
81	J. F. Masters	180	“	“	“	1,620 00
82	Mary Meyers	62	“	“	“	558 00
83	J. O. Brewer	17.6	“	“	“	158 40
84	F. B. Brewer	50	“	“	“	450 00
85	J. O. Brewer	32.4	“	“	“	291 60
86	E. F. Hendrix	60	“	“	“	540 00
87	H. E. Ritchie	138	“	“	“	828 00
		1,359				11,817 00

Unsold Tracts in Block B.

88	A	268			15 00	4,020 00
89	B	205	6 00	6 00	6 00	1,230 00
90	C	108	5 00	12 00	8 50	918 00
91	H	66.7	10 00	“	11 00	733 70
92	M	230	8 00	10 00	9 00	2,070 00
		777.7				8,971 70

548 *Tracts Sold by H. & G. in Block C.*

No.	To whom sold.	No. of acres.	Gurley's valuation.	Pierson's valuation.	Master's valuation.	
					Per acre.	Amounts.
93	D. Y. Gaynes	134	6 00	12 00	9 00	1,206 00
94	B. Jackson	150	5 00	8 00	6 50	975 00
95	H. L. Taylor	150	5 00	7 00	6 00	900 00
96	—— Mullins	36	7 00	“	7 00	252 00
97	—— Smithart	50	5 00	“	6 00	300 00
98	D. Millar	65	“	“	“	390 00
99	M. L. Westbrook	165	8 00	10 00	9 00	1,485 00
100	R. F. Worley	42	6 00	11 00	8 00	336 00
101	Gaines & Reddick	17	“	8 00	7 00	119 00
102	Ruth Slaughter	35	10 00	12 00	11 00	385 00
		844				6,348 00
	Unsold Tracts in Block C.					
103	Cedar timber	200			10 00	2,000 00
104	Next to river	3,340			8 00	26,720 00
105	West of above tract	1,400			10 00	14,000 00
		4,940				42,720 00
	Compromise.					
106	H. Duty	369				
107	F. Ruble	901				
	Tracts Sold by H. & G. in Bl'k D.					
108	Slaughter's tract	215	12 00	10 00	10 00	2,150 00
	Unsold Tracts in Block D.					
109		2,106.4	8 00	15 00	10 00	21,060 40

Endorsed: No. 52. Chancery. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Exhibit E. Master's report, Zarza. Filed Oct. 8, 1889. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

549 *Field-notes of Block A.*

Begin-ing at the S. W. cor. of Pedro Zarza 5-lea. grant, thence N. 62 E. 5,534 vs. to the east boundary line of Wright and Nolan tract 82 vs. N. 28 W. from the S. E. cor. of same; thence N. 28 W. 2,797 vs. to the N. W. cor. of W. F. Martin tract; thence S. 62 W. 88 vs. to the S. E. cor. of John T. Price survey; thence N. 28 W. 493 vs. to Price N. E. cor.; thence N. 62 E. 41 vs. to F. F. Gresham S. W. cor.; thence N. 28 W. 574 vs. to other cor. of Gresham in Servier south line; thence N. 62 E. 193 vs. to Servier S. E. cor.; thence N. 28 W. 858 vs. to Servier's N. E. cor.; thence S. 62 W. 658 vs. to J. W. Wren S. W. cor.; thence N. 28 W. 1,000 vs. to J. W. Wren N. W. cor.; thence N. 67½ E. 359 vs. to a cor. of block D, this bein- the S. W. cor. of E. G. Hanrick farm; thence N. 33 W. 1,359 vs. to Peter Gummult N. E. cor. in Godarian S. line; thence N. 61½ E. 497 vs. to Godarian S. E. cor.; thence N. 11 W. 446 vs. to the N. E. cor. of block A in the N. boundary line of Pedro Zarza 4-league grant; thence S. 62 W. 6,653 vs. to the N. W. cor. of said Pedro Zarza 4-league grant; thence S. 28 E. 5,000 vs. to the S. W. corner of said Pedro Zarza 4-league grant; thence N. 62 E. 800 vs. to the N. W. cor. of Pedro Zarza 5-league —; thence S. 28 E. 2,500 vs. to the place of begin-ing.

Field-notes of Block B.

Begin-ing at the S. E. cor. of block A in the E. line of Wright and Nolan tract, thence following the east line of block A N. 28 W. 2,777 vs. to the N. W. cor. of W. F. Martin tract; thence S. 62 W. 88 vs. to the S. E. cor. of Jno. T. Price survey; thence N. 28 W. 493 vs. to Price N. E. cor.; thence N. 62 E. 41 vs. to F. F. Gresham S. W. cor.; thence N. 28 W. 574 vs. to another cor. of Gresham's in Servier's south line; thence N. 62 E. 193 vs. to Servier's S. E. cor.; thence N. 28 W. 858 vs. to Servier's N. E. cor.; thence S. 62 W. 658 vs. to J. W. Wren S. W. cor.; thence N. 28 W. 1,000 vs. to
550 J. W. Wren N. W. cor.; thence N. 62 E. 359 vs. to the S. W. cor. of block B; thence following the south line of block D N. 60 E. 1,414 vs. to the N. W. cor. of I. V. Eubank 100-acre tract; thence N. 62 E. 564½ vs. to the N. E. cor. of Eubank's; thence S. 28 E. 1,000 vs. to Eubank's S. E. cor.; thence N. 61 E. 428 vs. to J. W. Cook's N. E. cor.; thence S. 28 E. 425 vs. to Jno. B. Taylor's N. W. cor.; thence N. 61½ E. 1,158 vs. to Jas. B. Taylor N. E. cor.; thence N. 62 E. 1,600 vs. to the N. E. cor. of block B in the west line of block C; thence S. 28 E. 497 vs.; thence S. 30 E. 877 vs. to the S. W. cor. of block C; thence S. 62 W. 407 vs. to the N. E. cor. of the 5-league —, from which a dead mulberry — N. 64½ E. 12 vs. and a dead elm stump S. 14½ W. 2 vs. and a cedar N. 68½ E. 1⅖ vs. and an elm N. 61 E. 12½ vs.; thence S. 28 E. 2,500 vs. to the S. E. cor. of the 5-league —, from which a post oak, marked Z, brs. S. 28 E. 23 vs.; thence S. 62 W. 4,642 vs. to the place of begin-ing.

Field-notes of Block C.

Beginning on the west bank of the Brazos river at the N. E. corner of Pedro Zarza 4-league grant for the N. E. corner of block C, from which a willow bears N. 3 E. 6⅖ vs. and another willow bears N. 21 E. 9⅘ vs.; thence S. 62 W. 80 vs. cross Bull Hide creek, 7,954 vs. to the N. E. cor. of block D for the N. W. corner of block C; thence S. 28 E. 4,074 vs.; thence S. 30 E. 877 vs.; thence N. 62 E. 10,762 — to the S. E. cor. of said Pedro Zarza 4-league grant for the S. E. cor. of block C on the west bank of the Brazos river, where a box elder is marked Z; thence following the different meanders of the Brazos river to beginning.

Field-notes of Block D.

Begin-ing at the N. E. corner of block A in the N. line of the Pedro Zarza 4-league survey, thence S. 11 E. 446 vs. to the Godarian S. E. corner; thence S. 61½ W. 497 vs. to the N. E. cor-
551 ner of Peter Gummult survey; thence S. 33 E. 1,359 vs. to the S. W. corner of block D in the N. line of block B; thence N. 60 E. 1,414 vs. to Eubank's N. W. corner; thence N. 62 E. 564½ vs. to Eubank's N. E. corner; thence S. 28 E. 1,000 vs. to Eubank's S. E. corner; thence N. 61 E. 428 vs. to J. W. Cook's N. E. corner; thence S. 28 E. 425 vs. to J. B. Taylor's N. W. corner; thence N. 61½ E. 1,158 vrs. to Jas. B. Taylor's N. E. corner; thence N. 62 E. 1,600 vs. to the S. E. corner of block D in the west line of block C; thence N. 28 W. 3,147 vs. to the north line of the 4-league grant for the N. E. corner of block D; thence S. 62 W. 4,700 vs. to the place of beginning.

Sept. 13th, 1889.

EDMUND PEIRSON, *Surveyor.*

Surveyed for $7.50.

A Description of the Tracts of Land in Block C, Zarza Grant, Allotted to E. J. Gurley.

1st. 3,340 acres: Begin-ing on the Brazos river at the N. E. cor. of the Feilding Roble compromise, thence in a northerly direction along the meanders of the Brazos river to the S. E. corner of a 134-acre tract, marked in the map, Exhibit E, "D. Y. Gaynes;" thence W. along the S. line of said Gaynes tract to the S. W. corner of said tract; thence N. along the W. line of said tract to the N. boundary of the Zarza grant; thence S. 62 W. along the said N. line of the Zarza grant to the N. E. cor. of the Jackson tract; thence S. along the E. line of the said Jackson tract to the S. E. corner of said Jackson tract; thence S. 62 W. along the S. line of said Jackson tract 920 varas & said line continuing S. 62 W. 391 vs.; thence S. 28 E. 1,180 vs.; thence S. 62 W. parallel with the N. line of the
552 Zarza grant 680 vs.; thence S. 28 E. 2,000 vs. to the N. line of the Feilding Ruble compromise; thence N. 60 E. along the N. line of said Ruble compromise 1,551 vs. to the N. E. corner of said Ruble compromise; thence S. 30 E. along the E. line of said Ruble compromise 1,093 vs.; thence N. 60 E. along the S. line of said Zarza grant to the S. W. corner of the Feilding Ruble compromise; thence N. 30 W. along the W. line of said Ruble compromise to the N. W. corner of same; thence N. 60 E. along the N. line of the said Ruble compromise 2,040 vs. to the Brazos river, the place of beginning.

Second. 200 acres, E. J. Gurley's sheep ranch: Beginning at the S. E. corner of Westbrook's 165-acre tract, thence S. 28 E. with the public road 630 vs.; thence east with said road 400 vs; thence S. 28 E. 400 vs.; thence S. 62 W. 1,190 vs.; thence N. 28 W. 1,217 vs. to Westbrook's S. line; thence N. 51 E. with said S. line 837 vs. to the place of begin-ing.

3rd. All the balance of the land in said block C not described in the two above tracts and not heretofore sold by Hanrick & Gurley and not embraced in the compromise to Duty & Ruble are allotted to the plaintiffs.

Description of the Lands in Block D Allotted to the Plaintiffs.

1st. 300 acres: Begin-ing at the S. W. corner of said block D, thence running S. with the S. line of said block D such a distance that a line drawn parallel with the W. line of said block D to the N. line of the Zarza grant, thence westwardly along the N. boundaries of said block D to the N. W. corner thereof, and thence southwardly along the W. line of said block D to the place of begin-ing should contain 300 acres.

2nd. 721½ acres, marked on the map made by F. O. Porter, surveyor of Falls county, Exhibit B, as pasture lands.

553 I allot to E. G. Hanrick in said block D 754¾ acres, marked on said map farm, it being all of said land marked on said map as "farm," and also that part embraced in the lines inclosing the letter "H," except the 300 acres allotted to plaintiffs, as above described.

The foregoing is endorsed as follows, to wit: No. 52. Chancery. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Exhibit F, master's report. Filed Oct. 8, 1889. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Valuation of the Lands in the Antanacio de la Serda Grant as Testified to by Witnesses and Fixed by the Master.

Tracts sold by Hanrick and Gurley.

No.	Price per acre sold at.	To whom sold.	No. of acres.	Goodrich valuation.	Clarkson valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation.	
								Per acre.	Amount.
1	3 00	B. F. Williams	80	4 00	4 00	6 00	5 00	4 75	380 00
2	2 00	Sam. Bell	493	3 00		7 50	7 50	6 00	2,958 00
3	"	C. R. Long	138			7 00		7 00	966 00
4	5 00	M. J. Fany	70	5 00		5 00	5 00	5 00	350 00
5	4 00	J. R. McClanahan	50	4 00	4 00	4 50	4 00	4 00	200 00
6	7 00	F. E. Smith	70	5 00	5 00	7 00	6 00	5 75	402 50
7	5 00	W. D. Baiton	50	5 00	5 00	5 00	6 00	5 25	262 50
8	3 00	F. F. Greene	100	6 00		6 00	6 00	6 00	600 00
9	4 00	Jones Taylor	100	6 00	6 00	7 50	6 00	6 50	650 00
10	3 00	Jas. Gameson	100	5 00		5 00	5 00	5 00	500 00
11	4 50	Jno. Yates	70	4 00		4 50	4 50	4 33⅓	303 33
12	6 00	J. N. Adams	89	6 00		6 00	6 00	6 00	534 00
*13	5 00	N. B. Relter	157½	"		"	"	"	945 00
†14	3 00	W. S. Hunnicutt	89			7 50	7 50	7 50	667 50
15	8 00	Ellis Stewart	55	4 50	4 00	4 50	4 00	4 25	233 75
16	6 00	J. T. Wilsford	100	6 00		7 50		6 75	675 00
17	6 00	"	20	6 00	6 50	7 50	7 00	6 75	135 00
18		A. A. Dwight	217	4 00		4 00	4 00	4 00	868 00
19	2 00	R. J. Garrett	28	3 00		3 00	4 00	3 33	93 24
20	6 00	T. B. Watson	13½	6 00	6 00	7 50	7 50	6 75	91 12
21	"	"	80.2	"	"	"		6 50	521 30
22	4 00	Wm. Kimbraugh	150	4 00		5 00	5 00	4 66	699 00
23	5 00	Levy Rosenthall	50	5 00	5 00	"	"	5 00	250 00
24	"	J. T. Wilsford	122[illegible]	6 00	6 00	7 00	6 00	6 25	763 00
25	6 00	Julia A. Curry	63[illegible]	8 00		8 00	10 00	8 66	549 00
26	7 00	Alice Barton	60	6 00	6 50	6 50	7 00	6 75	405 00
			2,617						15,002 24

* Given for services as surveyor.
† Add 2.00 for improvements.

Tracts Sold by Hanrick & Gurley—Continued.

	No.	Price per acre sold at.	To whom sold.	No. of acres.	Goodrich valuation.	Clarkson's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation. Per acre.	Master's valuation. Amount.
	27	5 00	F. Richelmein	124¾	6 00	....	7 50	7 00	6 85	854 50
	28	6 00	W. A. J. Nicholson	100	6 00	10 00	12 50	12 50	10 25	1,025 00
	29	5 00	Jno. Bade	100	5 50	5 50	5 50	5 50	5 50	550 00
	30	4 00	Ab. Moore	150	4 00	....	7 00	6 00	5 66	849 00
(Casey)	31	5 00	Wm. Brown	50	5 00	....	5 00	5 00	5 00	250 00
	32	10 00	S. A. Carter	50	7 00	....	7 50	7 00	7 16	358 00
(Reichlemead)	33	5 00	Jacob Sheiber	174	5 00	5 50	6 00	....	5 50	957 00
	34	"	"	24½	"	"	"	....	"	134 75
	35	"	"	10	"	"	"	....	"	55 00
	36	"	A. D. Smith	60	6 00	6 00	6 00	....	6 00	360 00
(Casey)	37	"	W. O. Brown	49	5 00	....	5 00	5 00	5 00	245 00
(Ashworth)	38	....	R. V. T. Black	60	7 00	5 00	8 00	....	6 66	399 60
(McLeod)	39	5 00	C. C. Taylor	100	6 00	....	8 00	7 00	7 00	700 00
(Jackson)	40	....	V. B. Kitler	65	"	....	6 00	6 00	6 00	390 00
	41	....	Julius Green	61	4 00	....	6 00	6 00	6 33	386 13
	42	....	E. Fikes	126	5 00	....	"	"	5 66	713 16
	43	....	Elisha Washington	40	4 00	....	"	"	5 33	213 20
	44	....	Kelly Watson	35	"	....	"	"	"	186 55
	45	....	Wash. Livingstone	15	"	....	"	"	"	80 00
	46	....	Hardy Timmons	26½	"	....	"	"	"	141 25
P'd part	47	....	Ben. Moore	113	"	....	5 00	5 00	4 66	526 60
	48	....	Dan. Gamble	20	"	....	"	"	"	93 20
	49	....	Sam. Graham	15	"	....	6 00	"	5 00	75 00
P'd part	50	....	H'y Denson	73⅛	"	....	"	6 00	5 33	389 62
	51	....	Dan. Humphreys	106	"	....	"	"	"	565 00
	52	....	Monroe Armistead	52½	"	....	"	"	"	279 80
	53	....	Sandy Humphreys	41	"	....	5 00	5 00	4 66	191 06
P'd part	54	....	Alex. Frazer	101	10 00	....	10 00	10 00	10 00	1,010 00
	55	....	"	42½	4 00	....	4 00	4 00	4 00	170 00
	56	....	Ellis Stewart	32½	4 50	....	5 00	5 00	4 85	157 62
				2,018	....	....	....	....	....	12,306 04

Tract Sold by Hanrick & Gurley—Continued.

	No.	Prices sold at per acre.	To whom sold.	No. of acres.	Goodrich's valuation.	Clarkson's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation.	
									Per acre.	Amounts.
556	57	5 00	Jos. Taylor	103	5 00	....	5 00	5 00	5 00	515 00
	58	4 00	Zeb. McMullon	101½	4 00	....	"	"	4 66	473 00
	59	3 00	Rob't Smith	171.2	3 00	....	6 00	4 00	4 33	741 29
	60	"	T. D. Reed	100	6 00	6 00	7 50	6 00	6 37	637 00
	61	8 50	W. A. J. Nicholson	106	8 00	10 00	12 00	10 00	10 00	1,060 00
	62	....	Goodrich & Clarkson	1,625	7 50	7 50	11 00	9 00	8 75	14,218 75
				2,206	....	....	....	....	....	17,645 04

Parties in Possession with Consent of H. & G.

	No.	Prices sold at per acre.	To whom sold.	No. of acres.	Goodrich's valuation.	Clarkson's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation. Per acre.	Master's valuation. Amounts.
	63	....	H. L. Parton	50	6 00	....	6 00	6 00	6 00	300 00
	64	....	Jno. Steele	340	6 50	....	7 50	7 00	7 00	2,380 00
Value with improv'ts	65	....	J. T. Simmons	126	10 00	....	10 00	10 00	10 00	1,260 00
	66	....	McCorkhill & Loggins	100	8 00	....	8 00	8 00	8 00	800 00
	67	....	Wm. Jolley	103.3	7 00	....	7 50	8 00	7 50	774 50
	68	....	James Davis	104	6 00	....	6 00	6 00	6 00	624 00
Sold by H. & G.	69	....	Mos. Sthull	61	4 00	....	4 00	5 00	4 33	264 13
	70	....	W. B. Wren	54	"	....	5 00	"	4 66	252 00
	71	....	E. F. Thomas	54	5 00	....	6 00	6 00	5 66	305 60
In litig'n	72	....	Wm. Cross	160	By agreement.		....	....	....	160 00
	73	....	H'y Stewart	84	4 00	....	5 00	5 00	4 66	392 00
Sold by H. & G.	74	....	Rob't Smith	100	3 00	....	4 50	5 00	4 16	416 00
	75	....	Jno. Parson	112	6 00	....	7 50	7 50	7 00	784 00
Sold by H. & G.	76	....	Gus. Sthull	50	5 00	....	6 00	6 00	5 66	283 00
	77	....	D. F. Parsons	100	7 00	....	7 00	7 00	7 00	700 00
With improvements	78	....	N. J. Morris	76	"	....	"	"	"	532 00
Sold by H. & G.	79	....	H. J. McConnell	39½	"	....	7 50	"	7 16	282 32
	80	....	P. J. Smith	100	5 00	....	6 00	6 00	5 66	566 00
	81	....	J. T. Owens	68¾	"	....	5 50	5 50	5 33	366 60
Sold by H. & G	82	....	Mrs. Doyle	106	"	....	6 00	"	5 50	583 00
With improvem'ts	83	....	Young Meyers	60	8 00	....	8 00	....	8 00	480 00
				2,048	....	....	....	....	....	12,505 25

Parties in Possession with Consent of H. & G.

	No.	Price sold at per acre.	To whom sold.	No. of acres.	Goodrich's valuation.	Clarkson's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation.	
									Per acre.	Amount.
	84		J. T. Owens	21.7	5 00		5 00	5 00	5 00	108 50
	85		Jacob Husman	79	10 00	12 50	15 00	15 00	13 37	1,056 25
	86		David Eisman	81	12 00	12 00	"	"	13 50	1,093 50
				181.7						2,258 25

Tracts Sold by Alien Heirs.

	No.	Price sold at per acre.	To whom sold.	No. of acres.	Goodrich's valuation.	Clarkson's valuation.	Gameson's valuation.	Pierson's valuation.	Per acre.	Amount.
	87	5 00	Wm. Gameson	26½	5 00		5 00		5 00	132 50
	88	"	Jno. Lotrelle	2,530	6 00		5 00	5 00	5 33⅓	13,493 30
Agreed	89	4 20	R. J. Garrett	180	4 20		4 20	4 20	4 20	756 00
	90	8 00	L. J. Parlin	94½	6 00		7 00	6 00	6 33	599 18
	91	6 00	Henry Ray	59	6 00		6 00	"	6 00	354 00
	92	"	Henry Ship	50	"		"	"	"	300 00
	93	4 00	J. E. Vance	616	5 00		4 00	4 50	4 50	2,772 00
	94	5 00	J. R. Cohen	70	"		"	5 00	4 66	326 20
	95	"	Wm. McGaughey	70	"		5 00	"	5 00	350 00
	96	3 00	Dr. W. Hammer	100	8 00		6 00		7 00	700 00
	97	5 00	H. Travis	60	7 00		"	7 00	6 66	399 60
	98	4 00	Dr. Hammer	36	6 00		4 00	6 00	5 33⅓	192 00
	99		J. D. Oltorp	183			5 00	5 00	5 00	915 00
	100		"	228			6 00		6 00	1,368 00
	101		"	49	8 00			6 00	7 00	343 00
	102		W. S. Hunnicutt	65	6 00		"	"	6 00	390 00
	103		J. W. Gameson	63½	5 00		5 00	5 00	5 00	312 50
	104		V. M. Barton	65	6 00		5 00	6 00	5 66⅔	368 30
	105	5 00	Wilson Hammer	16	5 00		"	5 00	5 00	80 00
	106		S. B. Bryan	100	8 00		5 00	5 50	6 16	616 00
	107		"	50	"		"	"	"	308 00
	108		W. A. J. Nicholson	165	8 00		6 00	8 00	7 33⅓	1,210 00
	109		—— Cone	80	6 00		5 00	5 50	5 50	440 00
				4,955½						26,725 58

No.	Nos. as shown on map, Exhibit G.	Remarks.	No. of acres.	Goodrich's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation.	
							Per acre.	Amounts.
110	1	Same as T. D. Reed	355	5 00	5 00	5 00	5 00	1,775 00
111	2	Improved	231	7 00	5 00	6 00	6 00	1,386 00
112	3	Dr. Shaw	374	5 00	"	5 00	5 00	1,870 00
113	4	Paster & Brooks	190	6 00	6 00	6 00	6 00	1,140 00
114	5	Imp's	374	7 00	6 00	6 50	6 50	2,431 00
115	6	Inc. imp's	253	"	6 50	7 00	6 87	1,738 10
116	7		118	6 00	6 00	6 00	6 00	708 00
117	8		63½	"	5 00	5 00	5 33	338 45
118	9		91	"	"	6 00	5 66	515 05
119	10		100	"	6 00	"	6 00	600 00
120	11		41	5 00	4 00	5 00	4 66	191 00
121	12	Improvements	132	8 00	6 00	7 00	7 00	924 00
122	14		72	7 00	"	6 00	6 33⅓	456 00
123	15		35	5 00	5 00	5 00	5 00	175 00
124	16		153	6 00	6 00	6 00	6 00	918 00
125	17	Kimborough	55	5 00	5 00	5 00	5 00	275 00
126	18		108	4 00	4 00	4 00	4 00	432 00
127	19		35	6 00	5 00	5 00	5 33	186 55
128	21		73½	6 50	5 00	6 00	5 85	428 50
129	22		195	5 00	"	5 00	5 00	975 00
130		Improved	493	6 00	"	6 00	5 66	2,790 35
131	24	Low, wet prairie, not good for farming	662	4 00	3 00	3 00	3 33	2,204 45
132	25		418	"	"	"	"	1,391 90
133	26		516	8 00	5 00	5 00	6 00	3,096 00
134	27		192	12 50	10 00	10 00	10 83	2,079 36
135	28		87	9 00	7 00	7 00	7 66	664 40
136			159	7 00	6 00	6 00	6 33	1,006 47
137	30		199	5 00	5 00	5 00	5 00	995 00
138	31	Improved	208	8 00	7 00	7 50	7 50	1,560 00
			5,983					33,252 58

Unsold Tracts.

No.		Remarks.	No. of acres.	Goodrich's valuation.	Gameson's valuation.	Pierson's valuation.	Master's valuation.	
							Per acre.	Amounts.
139	32	Improved	90	9 00	7 00	8 00	8 00	720 00
140	33	Same as Jim Negess	235	6 00	6 00	6 00	6 00	1,410 00
141	34		160	"	5 00	"	5 66	905 60
142	35		98	6 00	5 50	6 00	5 83	571 30
143	36		71	8 00	6 00	7 00	7 00	497 00
144	37		225	"	....	8 00	8 00	1,800 00
145	....	Same as Wm. Gassoway, occupied by brothers, A. J. Owens	82	6 00	....	6 00	6 00	492 00
			961	....	....	....	....	6,395 90

Endorsed: No. 52. Chancery. Nicholas Hanrick *et al.* *vs.* E. G. Hanrick *et al.* Exhibit H. Master's report, La Serda. Filed Oct. 8, 1889. **J. H. Finks**, clerk, by Chas. H. Lednum, deputy.

560 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} Suit Pending in the U. S. Circuit —, at Waco.

In equity.

Whereas some of the lands embraced in this suit *and* also — litigation between other parties in the district and county courts of Falls county, and in which litigation the parties hereto are directly or indirectly interested, now, with the view of adjusting and settling finally the said land litigation, we have and do hereby agree as follows, viz:

1. That the tract of 150 acres on the La Serda conveyed by Wm. Brady to S. B. Bryan shall be set off at valuation by the master to said Wm. Brady in this suit as part of his share, and the judgement of the dist. court of Falls county heretofore rendered in favor of E. G. Hanrick against said S. B. Bryan for said land and three hundred dollars rents and profits shall be cancelled.

2. The suits of E. G. Hanrick *vs.* Ike Casey and *vs.* Wilson Hammers, pending in the district court of Falls county, shall abate, both def'ts having died pending both suits, and as to the lands claimed in said suits by said Hammers the same shall be set off to said Brady as part of his share at the master's valuation, and as to the 100 acres claimed in said suit by Ike Casey the same shall be set off to E. G. Hanrick as part of his share, also at master's valuation.

In above suits neither party shall recover costs of the other.

3. The tract of 160 acres occupied by Wm. Cross, and for the recovery of which E. G. Hanrick has brought suit in district
561 court of Falls county, shall be set off to E. G. Hanrick as
part of his share & chargeable to him at one hundred and sixty dollars in said partition.

4. As to the Aguirrie one league we agree on partition & division as follows: The tract of seventy-five acres of said league in controversy between E. G. Hanrick and J. W. Brown *et al.* shall be set off to Wm. Brady as part of his share; also tract of seventy-five acres occupied by John Bryant, also tract of one hundred and thirty-eight acres occupied by J. R. Lane, shall be set off to said Wm. Brady, and the tract of one hundred acres each in the possession of A. B. Gaither and S. B. Brewer and J. R. Lane respectively, and for the recovery of which E. G. Hanrick has brought suit against said Lane, Brewer, and Gaither respectively in dist. court of Falls county, shall also be set off to said Wm. Brady as part of his share in said partition. The first three mentioned tracts have been conveyed by said Brady to J. W. Brown, John Bryan, and J. R. Lane respectively, and said deeds may be referred to for particular description, & as to the last-mentioned three tracts the same are fully described in the petition of E. G. Hanrick filed in said dist. court respectively against said Lane, Brewer, and Gaither, and may be referred to for description.

And as to all the remainder of said tracts of one league known as the R. D. Aguirrie league the same shall be set off to E. G. Hanrick and E. J. Gurley as their share of said Aguirrie, and this allotment is made without regard to valuation and is separate and independent of the remainder of said estate; and it is also understood that the tract of 100 acres known as the Blackman tract on Cow bayou and now occupied by P. Keirsey shall be set off to E. G. Hanrick as part of his share, to be valued by the master, 562 and the judgement heretofore rendered by the county court of Falls Co. in favor of P. Keirsey *vs.* Blackman *et al.* shall be marked satisfied.

As to the suit of E. G. Hanrick *vs.* David Barton the same shall abate and the lands claimed by him in said suit shall be valued and set off to Wm. Brady.

It is also agreed that the suits pending against said Lane and Brewer and Gaither shall be dismissed upon the request of Wm. Brady at the cost of defendant in said suit.

July 18, 1889.

J. T. BRADY,
Att'y for Wm. Brady.
H. F. RING,
Att'y for Heirs of James Hanrick.
E. J. GURLEY,
L. W. GOODRICH,
For Goodrich and Clarkson, Att'ys for E. G. H.

The foregoing is endorsed as follows, to wit: No. 52. Chancery. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Master's report, Exhibit K. Filed Oct. 8, 1889. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

563 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} Suit Pending in the Circuit Court of the United States for the Eastern District of Texas.

In chancery.

Exceptions taken by the complainants, Nicholas Hanrick *et al.*, to the report made herein by the Honorable A. S. Lathrop, one of the masters of this court, to whom this cause was referred by an order of this court made and entered on the — day of ——, 1889, which report bears date on the — day of ——, 1889, the same having been filed in this court on the 8th day of Oct., 1889.

1st exception. For that said master in his said report says that the plaintiffs and the defendants, the heirs of Elizabeth O'Brien, of Ireland (meaning thereby the complainants and the defendants claiming under Elizabeth O'Brien, of Ireland), are not entitled to any compensation from E. G. Hanrick and E. J. Gurley for rents for any portion of said lands for the reason that the said parties never received any rents for any of said land, and that they could not have rented any of the same to advantage, whereas the said master should have said that complainants and said parties claiming under Elizabeth O'Brien, of Ireland, were entitled to rents and profits in the sum of $3,000 a year since the institution of the said suit to the time of the issuance of the writ of possession referred to in complainant's bill, of which amount complainants would be entitled to one-half and the defendants claiming under Elizabeth O'Brien, of Ireland, the other half.

2nd exceptions. For that the said master said as follows: "I find that the defendant E. G. Hanrick in managing said lands before the commencement of this land litigation paid out for the 564 benefit of the lands in Falls and Liberty counties embraced in this suit for costs and taxes the sum of $17,911.86, as will appear from Exhibit C, filed herewith and made a part of this report, for which advances he is entitled to reimbursement from the respective parties according to their interest in the lands. I also find that of said costs and taxes $10,000 should be charged to the Zarza grant and $7,911.86 to the La Serda grant. On the Zarza grant the shares of taxes and costs to be paid by the plaintiffs and heirs of Elizabeth O'Brien (meaning complainants and the defendants claiming under Elizabeth O'Brien, of Ireland) are each two-ninths or each $1,758.19, which amount I deduct from their shares in the respective grants and add the same to the share of the defendants E. G. Hanrick. * * *

The total valuation of all of said lands in said grant (meaning the Zarza grant) as valued by me amounts to the sum of $153,409.25; of this amount the plaintiffs are entitled (meaning complainants) to their share, two-ninths, or $34,090.94, less their share of costs and taxes allowed E. G. Hanrick, $2,222.22," whereas the said master should have found the said complainants entitled to all of said sum of $34,090.94 and should not have found E. G. Hanrick entitled to any portion of said $2,222.22 and should not have found him entitled to be reimbursed at the expense of complainants for any portion of said costs and expenses incur-ed by him as found by said master, and said master should have allotted in his said report out of the land on said grant allotted to E. G. Hanrick $2,222.22 worth more land at the valuation found by said master, as shown by the exhibits attached to his said report, than he did in fact allot complainants.

3rd exception. For that the said master in his said report says: My valuation of said lands (meaning the lands in the La Serda grant) is $126,090.88; of this amount the plaintiff- (meaning 565 complainants) are entitled to their share, two-ninths, or $28,020.19, less their share of costs and expenses paid by E. G. Hanrick, $1,758.19, whereas said master should have found that said complainants are entitled to the entire sum of $28,020.19 worth of land in said grant, and that no portion of said costs or expenses incurred by E. G. Hanrick should have been charged to them, and they should have been allotted in said partition out of E. G. Hanrick's share $1,758.19 worth more land in said grant at the valuations shown by said master in the exhibits attached to his report than he did in fact allot to them.

Wherefore complainants pray that said report be referred back to said master with appropriate instructions, by means of which the errors in the same may be corrected in this partition as above shown.

H. F. RING,
Att'y for Complainants.

The foregoing is endorsed as follows, to wit: 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Complainants' exceptions to special master's report. Filed Nov. 6th, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

566 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} Suit Pending in the Circuit Court of the United States for the Eastern District of Texas.

In chancery.

Exceptions taken by the defendants William Brady, Philip O'Brien, and W. H. Patrick, administrator, — the report made herein by the Honorable A. S. Lathrop, one of the masters of this court, to whom this cause was referred by an order of this court made and entered on the — day of ——, 1889, which report bears date on the — day of ——, 1889, the same having been filed in this court on the 8th day of October, 1889.

1st exception. For — the said master in his said report says "that the plaintiffs and defendants, the heirs of Elizabeth O'Brien, of Ireland (meaning thereby complainants and defendants claiming under Elizabeth O'Brien, of Ireland), are not entitled to any compensation from E. G. Hanrick and E. J. Gurley for rents for any portion of said lands for the reasons that the said parties never received any rents for any of said lands, and that they could have rented any of the same to advantage," whereas said master should have said that complainants and these defendants were entitled to rents and profits in the sum of $3,000 a year since the institution of this suit to the time of the *insurance* of writ of possession referred to in complainants' bill, of which amount complainants would be entitled to one-half and the defendants to the other half.

2nd exceptions. For that the said master says as follows: I find that the defendants E. G. Hanrick in managing the said lands
567 before the commencement of this land litigation paid out for the benefit of the lands in Falls and Liberty counties embraced in this suit for costs and taxes the sum of $17,911.86, as will appear from Exhibit C, filed herewith and made a part of this report, for which advances he is entitled to reimbursement from the respective parties according to their interest in the land. I also find that of said costs and taxes $10,000 should be charged to the Zarza grant and $7,911.86 to the La Serda grant; on the Zarza grant the shares of taxes and costs to be paid by the plaintiffs and the heirs of Elizabeth O'Brien (meaning complainants and the defendants claiming under Elizabeth O'Brien, of Ireland) are each two-ninths of each $1,758.19, which amount I deduct from their shares in the respective grants and add the same to the share of the defend-

ant E. G. Hanrick; the total valuation of all of said lands in said grant (meaning the Zarza grant) as valued by me amounts to the sum of $153,409.25; the shares of the heirs of Elizabeth O'Brien (meaning these defendants) in said land *is* two-ninths, or $34,090.94, less their share of costs and taxes allowed to E. G. Hanrick, $2,222.22, whereas the said master should have found these defendants entitled to all of said sum of $34,090.94 and should not have found the defendant E. G. Hanrick entitled to any portion of said $2,222.22 and should not have found him entitled to reimbursement at the expense of these defendants for any portion of said costs and expenses incurred by him as found by said master, and said master should have allotted these defendants in his report out of the lands on said grant allotted $2,222.22 worth more land than the valuation found by said master and shown by exhibits attached to his report than he did allot to complainants.

568 3rd exception. For that said master in his said report says my valuation of said lands (meaning the lands in the La Serda grant) is $126,090.88. Of this amount the heirs of Elizabeth O'Brien (meaning these defendants) are entitled as their share to two-ninths, or $28,020.19, less their share of costs and taxes paid by E. G. Hanrick, $1,758.19, leaving $26,262; whereas said master should have found that these defendants are entitled to the entire sum of $28,020.19 worth of land in said grant, and that no portion of said costs and expenses incurred by E. G. Hanrick should have been charged to them, and they should have been allotted in said partition $1,758.19 worth more land in said grant at the valuation shown by said master in the exhibits attached to his said report than he did in fact allot to them. Wherefore these defendants pray that said report be referred back to said master with appropriate instruction by which the errors in the same may be corrected in the particulars as above shown.

J. T. BRADY,
Att'y for Def't- Wm. Brady, Philip O'Brien,
and W. H. Patrick, Adm'r.

The foregoing is endorsed as follows, to wit: 52. Equity. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Defendants Wm. Brady *et al.* exceptions to special master's report. Filed Nov. 6, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

569 In the U. S. Circuit Court for 5th Circuit & N. Dist. Texas, at Waco.

NICHOLAS HANRICK *et al.* *vs.* E. G. HANRICK *et al.*	In Equity.

The exceptions of E. G. Hanrick, one of the def'ts in the above-styled cause, to the report of the master filed herein on the 8th day of Oct., 1889.

Now comes E. G. Hanrick, one of def'ts in above-styled cause, by his attorneys, and excepts to the report of the master herein filed Oct. 8th, 1889, and for cause of exception says:

1st. The said report treats the Pedro Zarza grant and the A. de la Serda grant as two separate and distinct estates and attempts to separately partition the same, & in so doing does not follow the decree.

2nd. The report fails to set off to this def't the lands improved by him on the Zarza grant, as required by the decree, but in lieu thereof sets off to him land on the La Serda grant not improved or occupied by him.

3rd. The said report fails to allow this def't any interest on the amounts reported as expended by him for taxes and costs.

4th. The decree in this cause does not authorize the master to appropriate the money found due this def't on account of taxes and costs paid by him towards the payment of land set off to this def't, which is in effect done by said report.

5th. This def't also excepts to the valuation placed by said report upon the lands reported as sold & conveyed by this def't before the institution of this suit, because it appears from the records in this cause that said lands were sold at a time when the validity
570 of said title and the right of possession of this def't were seriously litigated by adverse claims and when the section where said lands were situated was almost entirely unsettled and undeveloped, and said lands were sold at correspondingly low prices.

6th. Because the said report is based on the theory that this def't was trustee for the pl'tffs herein and not a cotenant with them; the said lands so sold as aforesaid by this def't should, in making partition, be charged against this def't at the price for which he sold the same, if considered at all in partition.

7th. Because the report in effect denies the right of this def't as heir, but imposes the entire burden of the settlement and development of said lands upon the inheritance of this def't, the benefit of which accrues under said report to his coheirs.

Wherefore this def't prays that said report be not received and that the same be referred to said master with instructions.

GOODRICH & CLARKSON,
Att'ys for Def't E. G. Hanrick.

The foregoing is endorsed as follows, to wit: In chancery. No. 52. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Exceptions of def't E. G. Hanrick to master's report. Filed Nov. 7th, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

571 NICHOLAS HANRICK *et al.*
vs.
E. G. HANRICK *et al.*
} No. 52. In Equity.

On the 26 of November, 1889, this cause having come on to be heard on the report and supplemental report of A. S. Lathrop, Esqr., standing master of this court, to whom it was referred to make partition of the lands described in the decree of this court, entered in this cause on the 10th day of December, 1888, and to pass upon and report upon the claims set up by the parties, respectively, for rents, damages, and contribution, and for taxes and costs paid, which report of said master was filed herein on the 8th day of Oct., 1889, and supplemental report filed herein Nov. 4, 1889, and also upon exceptions taken to said reports on the part of complainants and also on part of the defendants William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, and also upon the part of the defendant E. G. Hanrick, and said cause having been argued by counsel and due deliberation had thereon, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that each and all of the said several exceptions to the said master's report be, and the same are hereby, overruled.

It is further ordered, adjudged, and decreed that said report be, and the same is hereby, approved and confirmed, and that said lands be partitioned and divided between the parties hereto in accordance with said report as follows, to wit:

I.

As to the one league of land lying in Falls county, Texas,
572 west of the Brazos river, and granted to Rafael de Aguirre,
it is ordered, adjudged, and decreed that the following tracts of land, parts of said league, be, and the same are hereby, set off to the defendants William Brady, Philip O'Brien, and W. A. Patrick, administrator of Elizabeth O'Brien: One tract of 74 acres: Beginning at the S. E. corner of survey made for E. H. Featherstone branch, thence S. 76½ W. 697 vs. to Featherstone's S. W. cor., thence S. 18 E. 664 vs. to Hyden's corner, thence N. 62 E. with Hyden's line 860 vs. to cor. in bed of said branch, thence following the meanders of the bed of said branch up to the beginning.

Also another tract of 72½ acres: Beginning in the S. boundary line of a survey of 138 acres made for J. R. Lane, thence S. ½ W. 693 vs. to line of Adelle Featherstone; thence N. 87¼ E. 220 vs. pass the N. E. cor. of said Featherstone tract, 760 vs. to cor. in the prairie; thence N. 32½ W. 636 vs. to corner of same tract; thence N. 7¾ E. 53 vs. to another corner of Lane's survey; thence N. 79¾ W. 429½ varas to beginning; also another tract of 138 acres of land fully described in a deed made by William Brady to J. R. Lane, dated May 2nd, 1887, and recorded on page —, volume —, of Records of Deeds of Falls Co.; also another tract of land of 100 acres described in a deed made by William Brady, by his attorney-in-fact, J. T. Brady, to J. R. Lane, dated — day of ——, 1889, and recorded in the deed record of Falls county; also another tract of 100 acres of land described in a deed made by William Brady, by his attorney-in-fact, J. T. Brady, to S. B. Brewer, and dated — day of ——, 1889, and recorded in the record deeds of Falls county; also another tract of 100 acres of land described in the deed of William Brady, by his attorney-in-fact, J. T. Brady, to A. B. Gaither, dated — day of ——, 1889, and recorded in the record of deeds of Falls county,

and it is further ordered, adjudged, and decreed that all of
573 the rest and residue of said Aguirre league in Falls county
be partitioned and set off to the def't- E. G. Hanrick and E. J. Gurley, to which said partition and allotment of said lands on the said Aguirre league, owing to adverse possession of other parties, all parties to this suit in open court consented and agreed to as a finality.

II.

As to said Pedro Zarza five-league grant in Falls county, Texas west of the Brazos river, it is ordered, adjudged, and decreed that the following-described portion of said grant, designated as block A on the map accompanying the master's report, and bounded as follows: Beginning at the S. W. corner of Pedro Zarza five-league grant, thence N. 62 E. 5,534 vs. to the E. boundary line of the Wright and Nolan tract, 82 vs. N. 28 W. from the S. E. corner of the same; thence N. 28 W. 2,797 vs. to N. W. corner of the W. F. Martin tract; thence S. 62 W. 88 vs. to the S. E. corner of the John T. Prince survey; thence N. 28 W. 493 vs. to said Prince's N. E. corner; thence N. 62 E. 41 vs. to F. F. Gresham's S. W. corner; thence N. 28 W. 574 vs. to another corner of Gresham in the S. line of the Servier survey; thence N. 62 E. 193 vs. to Servier's S. E. corner; thence N. 28 W. 818 vs. to Servier's N. E. corner; thence S. 62 W. 658 vs. to J. W. Wren's S. W. corner; thence N. 28 W. 1,000 vs. to J. W. Wren's N. W. corner; thence N. 67½ E. 359 vs. to a corner of block D on said map, the same being the S. W. corner of the E. G. Hanrick farm tract; thence N. 33 W. 1,359 vs. to Peter Gumelt N. E. corner in Gadarian S. line; thence N. 61½ E. 497 vs. to Godarian S. E. corner; thence N. 11 W. 446 vs. to the N. E. corner of said block A in the N. boundary line of said Pedro Zarza grant; thence S. 62 W. 6,682 vs. to the N. W. corner of said Pedro Zarza grant; thence S. 28 E. 5,000 vs. to the S. W. corner of the fourth league of said grant; thence N. 62 E.
800 vs. to the N. W. corner of the fifth league of said grant;
574 thence S. 28 E. 2,500 vs. to the place of beginning, be divided as follows, to wit: To the def't- Wm. Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, it is adjudged and decreed that the following portion of said block A be allotted and set aside to them, viz: Beginning at the N. line of the Wright and Noland 640-acre tract at a point 460 vs. S. 62 W. from its N. E. corner at the S. E. corner of a survey of 100 acres made for A. J. Merrett, thence along the N. line of said Wright & Noland tract S. 62 W. to the S. E. corner of Jake Morris tract, distant 643 vs.; thence N. 4½ W. 878 vs. to the S. E. corner of a survey made by Wm. Brady for John Prince; thence S. 62 W. 688 vs. to the N. E. corner of the Enoch Wiggins tract; thence N. 4½ W. 812 vs. to the N. E. corner of Geo. Bowman tract; thence S. 86½ W. 1,519 vs. to a point in the E. line of the W. W. Davis tract; thence N. 4 W. along Davis's said E. line 490 vs. to his N. E. corner; thence S. 72 W. along Davis's N. line 470 vs. to S. E. corner of L. S. Bowman tract;

thence N. 17½ W. 753 vs. to the N. E. corner of Bowman tract; thence N. 75 W. along said Bowman tract to the line of the 6-acre survey for Cotton Church; thence N. 15 E. 174 vs. to the S. line of the Irwin tract; thence along the said Irwin line S. 75 E. 220 vs. to the S. E. corner of the Irwin tract; thence N. 15 E. 302 vs. to a point in the S. line of Krantz 159-acre survey; thence S. 75 E. with Krantz S. W. line to his S. corner 829 vs. in the W. line of a survey made for M. D. Fergeson; thence S. 15 W. 93 vs. to his S. W. corner; thence S. 75 E. 357 vs. to his S. E. corner; thence N. 15 E. 241 vs. to the most northerly corner of a survey of 50 acres made by Wm. Brady for D. A. Mix; thence N. 62 E. 820 vs. to a point in the E. line of said block A, the same being in the W. line of a 200-acre tract of land sold by Wm. Brady to J. W. Wren; thence
575 S. 28 E. with the east line of block A to the S. W. corner of
the said J. W. Wren tract; thence N. 62 E. 658 vs. to the N. E. corner of the Servier survey, same being in the E. line of block A; thence S. 28 E. 818 vs. to the S. E. corner of said Servier tract; thence S. 62 W. about 600 vs. to the N. E. corner of a tract — 36 acres sold by Wm. Brady to Thomas McCullough; thence S. 28 E. 334 vs. to the S. E. corner of said McCullough tract; thence S. 4½ E. about 210 vs. to the N. W. corner of a 48½-acre tract, made by said Brady for John T. Prince; thence N. 62 E. 443 vs. to the N. E. corner of said Prince's tract, the same being in the E. line of said block A; thence S. 28 E. to the S. E. corner of said Prince tract; thence S. 62 W. to the N. E. corner of A. J. Merrett survey; thence S. 4½ E. 878 vs. to the place of beginning, containing 925.4 acres of land; and to the complainants, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whalen, Robert Whalen, Bridget Whalen, Eliza Whalen, and Catherine O'Neil, it is adjudged and decreed that the following portion of said block A be allotted and set aside to them, viz., tracts referred to in said report as G & F, containing 117 acres, and bounded as follows: Beginning at the most northerly corner of D. A. Nix tract, thence N. 62 E. 820 vs. to a point in the E. line of block A, same being in the W. line of a 200-acre tract sold by Wm. Brady to J. W. Wren; thence N. 28 W. about 600 vs. to said Wren's N. W. corner; thence N. 62 E. along the N. line of said Wren tract 359 vs.; thence N. 33 E. along the E. line of said block A 370 vs. to the S. E. corner of Peter Gumult; thence S. 61½ W. 816 vs. to the S. W. corner of said Gumult survey; thence S. 15 W. with the line of the Deering survey to the E. corner of the 159-acre Krantz survey; thence with the S. E. line of said Krantz survey about 75 varas
576 to the corner of said M. B. Fergeson 50-acre tract; thence S.
75 E., along the N. line of said Fergeson tract, 357 vs. to his most easterly corner; thence S. 15 W., along his S. E. line, to the place of beginning; also the 45-acre tract marked E in said master's report, begin-ing on the S. line of said Servier tract 193 vs. S. 62 W. from his S. E. cor., the same a point in the E. line of said block A, thence S. 28 E., along said line of said block, 514 vs.; thence S. 62 W. to the E. line of said J. W. Watson survey; thence N. 4½

W. about 200 varas to said Watson's N. E. corner; thence N. 28 W., along the E. line of Thomas McCullough 36½-acre tract, to his N. E. corner; thence N. 62 E. to the place of beginning; also the 40-acre tract marked I in said master's report, beginning on the N. line of said Wright & Nolan 640-acre tract, the same S. E. corner of said A. J. Merritt 100-acre tract, thence N. 4½ W. 878 vs. to the S. line of said Prince survey; thence N. 62 E. about 120 vs. to the E. line of said block A; thence S. 28 E. to the N. E. corner of said Wright & Nolan 640-acre tract; thence S. 62 W., along said N. line, 460 vs. to the place of beginning. And to the defendant E. G. Hanrick it is adjudged and decreed that all of the rest and residue of said block A be allotted and set aside to him, the same embracing lands sold by him in said block before the institution of this suit and the 640-acre tract of land sold by Edward Hanrick, deceased.

577 It is further ordered, adjudged, and decreed that the following-described portion of said Pedro Zarza 5-league grant, designated as block B on said map accompanying said master's report and bounded as follows: Beginning at the S. E. corner of block A, in the E. line of said Wright & Nolan tract, thence, following the E. line of said block A, N. 28 W. 2,797 vs. to the N. W. corner of W. F. Martin tract; thence S. 62 W. 88 vs. to the S. E. corner of said John T. Price survey; thence N. 28 W. 493 vs. to said Prince's N. E. corner; thence N. 62 E. 41 vs. to F. F. Gresham's S. W. corner; thence N. 28 W. 574 vs. to another corner of said Gresham's in Servier's S. line; thence N. 62 E. 193 vs. to Servier's S. E. corner; thence N. 28 W. 818 vs. to Servier's N. E. corner; thence S. 62 W. 658 vs. to J. W. Wren's S. W. corner; thence N. 28 W. 1,000 vs. to J. W. Wren's N. W. corner; thence N. 62 E. 359 vs. to the S. W. corner of block D; thence, following the S. line of block D, N. 60 E. 1,414 vs. to the N. W. corner of I. V. Eubank's 100-acre tract; thence N. 62 E. 564½ vs. to the N. E. corner of said Eubank's tract; thence S. 28 E. 1,000 vs. to said Eubank's S. E. corner; thence N. 61 E. 428 vs. to J. W. Cook's N. E. corner; thence S. 28 E. 425 vs. to Jas. B. Taylor's N. E. corner; thence N. 61½ E. 1,158 vs. to Jas. B. Taylor's N. E. corner; thence N. 62 E. 1,600 vs. to the N. E. corner of said block B, in the W. line of block C; thence S. 28 E. 947 vs.; thence S. 30 E. 877 vs. to the S. W. corner of said block C; thence S. 62 W., along the S. line of the Pedro Zarza grant, 407 vs. to the N. E. corner of the 5th Pedro Zarza league, from which a dead mulberry bears N. 64½ E. 12 vs., and a dead elm stump bears S. 14½ W. 2 varas, and a dead cedar bears N. 68½ E. 1 and two-fifths vs., and *and* elm bears N. 61 E. 12½ vs.; thence S. 28 E. 2,500 vs. to the S. E. corner of the 5th Pedro Zarza league, from which a post oak marked Z bears S. 28 E. 23 vs.; thence S. 62 W. 4,642 vs. to the place of beginning,
578 be divided as follows, to wit: To the defendant E. G. Hanrick it is adjudged and decreed that the following portions of said block B be allotted and set aside to him, viz: A tract of 100 acres sold by him to George W. Chumney, beginning at N. W. corner of Hyden tract, thence S. 28 E. 1,000 varas; thence S. 62 W. 564 vs.; thence N. 28 W. 1,000 varas; thence N. 62 E. 564 varas to begin-

ning; also a tract containing 100 acres sold by E. G. Hanrick to J. B. Evans, beginning at a stake in Saltpeter branch, thence N. 633 vs.; thence W. 1,250 vs.; thence S. 296 vs. to the bed of Saltpeter branch; thence down the branch with its meanders to the beginning; also another tract of land, beginning at the N. E. corner of a survey of 50 acres made by William Brady for J. W. Dunlap, from which an ash bears N. 36 E. 2½ vs., thence N. 85½ E., along N. line of the Parlin Kirsey tract to the W. line of a survey made for Etheridge, from which a cedar bears S. 42½ E. 1 and one-fourth vs.; thence N. 4½ E. to the N. W. corner of the survey made for Etheridge, the same being the S. W. corner of a survey made for Samuel French; thence N. 85½ E. 736 vs. to the N. E. corner of said Etheridge survey; thence S. 4½ E. 780 vs. to the bed of Cow bayou; thence following the meanders of said bayou down to the N. E. corner of a survey of 150 acres made for B. F. & L. D. Kirsey; thence S. 15 E. 540 vs.; thence S. 75 W. 638 vs.; thence N. 15 W. 215 vs.; thence S. 75 W. 638 vs. to the E. line of Polly Meyers' 100-acre tract; thence S. 15 E. to her S. E. corner; thence S. 75 W. 574 vs. to her S. W. corner; thence N. 15 W., along the W. line of Polly Meyers' tract, 1,040 vs. to bed of Cow bayou; thence up the bed of Cow bayou with its meanderings to the S. W. corner of what is known as the Blackman tract, same being on the E. line of the C. S. Aylesworth tract; thence N. 28 W. to the N. W. corner of said Blackman tract; thence N. 62 E. to the N. line of said Blackman tract, the 579 same being the S. line of the A. A. Dunlap & J. W. Dunlap tract to the Waco and Cameron road; thence N. 28 W. along the E. line of the J. W. Dunlap tract to the place of beginning, containing altogether 787 acres, same sold by E. G. Hanrick before the commencement of this suit.

And to the defendant E. J. Gurley it is adjudged and decreed that the following portions of said block B be allotted to him, viz: The tracts referred to in said report as tract B, beginning at the S. E. corner of the 5th league of said Zarza grant, thence N. 28 W. with the E. line of said grant 690 varas to bed of Cow bayou; thence up the said bayou with its meanders to N. E. corner of survey made for B. F. & L. D. Kirsey; thence S. 15 E. 540 varas; thence S. 75 W. 638 varas; thence N. 15 W. 315 varas; thence S. 75 W. 638 varas to the E. line of Polly Meyers' tract; thence S. 15 E. with her line to the lower line of said Zarza 5th league; thence N. 62 E. with said line to the place of beginning, containing 205 acres; also the tract designated in said report as tract A, containing 268 acres, beginning at the N. E. corner of J. O. Brewer tract at point in the E line of the Zarza 5th league, thence N. 28 W. with said line to the N. E. corner of said league; thence N. 62 E. 407 varas to the W. line of block C; thence N. 28 W. following said line to the bed of Cedar creek; thence up said creek with its meanders to the N. E. corner of J. S. Bartee tract; thence S. 4½ E. with the said Bartee's line to his S. E. corner; thence S. 85½ W. to N. E. corner of George W. French tract; thence S. 4½ E. with his line 760⅘ vs. to his S. E. corner; thence S. 85½ W. 60 vs. to N. E. corner Etheridge tract; thence S. 4½ E. with Etheridge E. line to N. W. corner of J. D.

Brewer tract; thence N. $85\frac{1}{2}$ E. with the line of said Brewer tract and with line of F. O. Brewer tract to the place of beginning, containing 268 acres; and to the complainants Nicholas Hanrick,
580 Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by
her husband, Thomas Clare: Peter Whelan, Mary Whelan, Robert Whelan, Bridget Whelan, Eliza Whelan, Catherine O'Neil it is adjudged and decreed that the following portion of said block B be allotted and set aside to them, viz: The tract referred to in said report as tract H, the same containing $67\frac{1}{2}$ acres and bounded as follows: Beginning at the N. E. corner of J. W. Wren 200-acre tract, thence S. 28 E. 1,000 vs. to his S. E. corner; thence N. 62 E. to the S. W. corner of a 50-acre tract of land conveyed by William Brady to I. V. Eubank; thence N. 28 W. to the N. W. corner of said Eubank's 50-acre tract; thence S. 62 W. to the place of beginning; and to the defendants, William Brady, Philip O'Brien, and W. A. Partrick, administrator of the estate of Elizabeth O'Brien, it is adjudged and decreed that all the rest and residue of said block B be allotted and set aside to them.

It is further ordered and adjudged and decreed that the following-described portion of said Pedro Zarza *5th*-league grant, designated as block C on said map accompanying said master's report and bounded as follows: Beginning on the W. bank of the Brazos river, at the N. E. corner of said grant, from which a willow bears N. 3 E. 64 varas, and another willow bears N. 21 E. $9\frac{4}{5}$ varas, thence S. 62 W. 80 varas, cross Bulhide creek 7,954 varas, to the N. E. corner of block D for the N. W. corner of block C; thence S. 28 E. 4,074 varas; thence S. 30 E. 877 varas; thence N. 62 E. 10,762 varas to the S. E. corner of the said Pedro Zarza grant for the S. E. corner of block C, on the W. bank of the Brazos river, where a box elder is marked Z; thence following the meanders of said river to the place of beginning, be divided as follows, to wit: To the defendant E. J. Gurley it is adjudged and decreed that the
following portions of said block C be allotted and set aside to
581 him, viz: One tract, 3,340 acres, beginning on the Brazos
river, at the N. E. corner of the Feilding Ruble compromise, thence in a northerly direction, following the meanders of the Brazos river, to the S. E. corner of a 134-acre tract marked on map B. Y. Gaynes; thence S. 62 W. along the S. line of said Gaynes tract to the S. W. corner of said tract; thence N. 28 W. along the W. line of said tract to the N. boundary of the Zarza grant; thence S. 62 W. with said line of the N. E. corner of the Jackson tract; thence S. 28 E. with the E. line of said Jackson tract to the S. E. cor. of the same; thence S. 62 W. with the said S. line 920 varas to its S. W. corner and continuing S. 62 W. 391 varas; thence S. 28 E. 1,180 varas; thence S. 62 W. 680 varas; thence S. 28 E. 2,000 vs. to the N. line of the Feilding Ruble compromise; thence N. 60 E. with the N. line of the said Ruble compromise 1,551 vs. to the N. E. corner of the same; thence S. 30 E. with the E. line of said Ruble compromise 1,093 vs.; thence N. 60 E. with the S. line of the said Zarza grant to the S. W. corner of another tract of the Feilding Ruble compromise; thence N. 30 W. with the W. line of said tract

to the N. W. corner of the same; thence N. 60 E. with the line of said tract 2,040 varas to the Brazos river, the place of beginning; also another tract of 200 acres, beginning at the S. E. corner of Westbrook's 165-acre tract, thence S. 28 E. with the public road 630 vs.; thence E. with said road 400 varas; thence S. 28 E. 400 varas; thence S. 62 W. 1,190 varas; thence N. 28 W. 1,217 varas to Westbrook's S. line; thence N. 51 E. with said line 837 varas to the place of beginning. And to the defendant E. G. Hanrick it is adjudged and decreed that the following portions of said block C be allotted and set aside to him, viz: The tract of land, containing 134 acres, sold by him to D. Y. Gaynes before the commencement of this suit, bounded as follows: Beginning at
582 the upper corner of Pedro Zarza survey, on the bank of the
Brazos river, thence S. 62 W. 1,250 varas, thence S. 28 E. 786 varas, thence N. 65 E. 723 varas to the bank of the river, thence up the river to the place of beginning; also a tract of land sold by him before the institution of this suit to Buck Jackson, containing 150 acres, beginning at the N. W. corner of tract set aside to the defendant E. J. Gurley in the N. line of the Zarza grant, thence S. 28 E. 920 varas, thence S. 62 W. with said Gurley's line 920 varas, thence N. 28 W. 920 varas, corner in the N. line of the Zarza grant, thence N. 62 E. with said line 920 vs. to the beginning: also a tract of land sold by him before the institution of this suit to R. A. Coburn, containing 50 acres, the same being designated on the map of said block C accompanying said masters' report as the Smithhart tract, bounded as follows: Beginning at a stake, from which a post oak bears N. 8 W. 8 varas, thence S. 28 E. 705 varas, thence S. 52 W. 400 varas, thence N. 28 W. 705 varas, thence N. 62 E. 400 varas to the beginning; also a tract of land, 36 acres, sold by him before the institution of this suit to Mullins and designated on said map as the Mullins tract, beginning at the S. E. corner of said tract of land sold to Coburn, thence N. 62 E. 73 varas, thence S. 28 E. 153 vs. to the N. line of H. L. Taylor tract, thence S. 62 W. with said line 546 varas, thence N. 28 W. 153 varas, thence N. 62 E. 473 varas to the place of beginning; also a tract of land sold by him before the institution of this suit to H. L. Taylor, containing 150 acres, beginning at the S. E. corner of said Mullins' tract, thence N. 62 E. 227 varas, thence S. 28 E. 751 varas, thence S. 62 W. 1,155 varas, thence N. 28 W. 751 varas, thence N. 62 E. 928 varas to the place of beginning; also the following-described tract of land: Beginning at the N. E. corner of the tract of land sold by E. G. Hanrick
583 to Dr. Miller on the N. line of Pedro Zarza grant, thence S.
28 E. with the E. line of said Miller tract to the S. E. corner of the same, thence S. 62 W. to the E. line of the Henry Duty 369-acre tract, thence S. 39 E. with the line of the Duty tract to the S. E. corner of the same, thence S. 51 W. with the line of Duty tract to N. E. corner of Westbrook's 165-acre tract, thence 139 E. 797 varas to Westbrook's S. E. corner, thence S. 51 W. with the S. line of said Westbrook tract 1,170 varas to its S. W. corner, thence N. 39 W. with the line of Westbrook tract and the W. line of Duty tract to the S. line of Ruth Slaughter tract, thence S. 62 W. with said S.

line to the W. line of block C, thence N. 28 W. with said line 800 varas to the N. W. corner of said block C in N. line of said Zarza grant, thence N. 62 E. with said line to the place of beginning, containing 324 acres of land, sold by E. G. Hanrick before the institution of this suit, and also the 369-acre tract of land lost by the estate in litigation with Henry Duty; also the 3 tracts of land embraced in the Feilding Ruble compromise, first tract containing 200 acres, beginning at the S. E. corner of the N. half of said Ruble league on the bank of the Brazos river, thence S. 60 W. 3,108 varas (at 2,798 varas cross the S. line of Pedro Zarza grant) to corner, from which an ash, marked V, bears S. 30 E. one vara; thence N. 30 W. 436 varas to corner, thence N. 60 E. 2,040 varas to corner on river, thence down said river to place of beginning, the second tract of 634 acres beginning at the S. W. cor. of 748-acre tract set aside to Hanrick in the Ruble compromise, from which a Spanish oak, marked W, bears N. 26 W. 10 varas, and a post oak bears N. 65½ W. 11 varas; thence N. 30 W. 1,243 varas, thence S. 60 W. 3,000 varas to the N. line of said Ruble league, to a corner, from which a mesquite bears N. 30 W. 6 varas and another bears S. 62 W.; thence S. 30 E. 1,083 varas to corner in N. line of Evans' survey near a
584 small branch, thence N. 65 E. 30 varas to corner of said survey,
thence S. 30 E. 160 varas to another corner of said Evans survey in the bed of same branch, thence N. 60 E. 2,971 varas to the place of beginning. The third tract, 143 acres, beginning at N. W. corner of 200-acre tract set off to Hanrick in said Ruble compromise, from which a cedar marked V bears S. 60 W. 2 varas and a hackberry marked X bears N. 20½ W. 3 varas; thence S. 60 W. 747 varas, with the upper line of said Ruble league, to N. W. corner of the same; thence S. 30 E. 1,067 varas, with the W. line of said league, to the S. line of the Zarza grant; thence N. 60 E. 747 varas to the S. W. corner of said 200-acre tract, thence N. 30 W. 1,083 varas to the place of beginning.

And to the defendants William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, it is adjudged and decreed that the following portion of said block C be allotted and set aside to them, viz: The 200-acre tract of land set aside to the said E. G. Hanrick in said Ruble compromise, beginning at the N. W. corner of the 634-acre tract, set aside to said Ruble, hereinbefore described, thence S. 30 E., with the W. line of said tract, 1,083 varas to the S. line of the Zarza grant; thence S. 62 W. to the S. E. corner of the tract of 143 acres, hereinbefore described, set aside to said Ruble in the aforesaid compromise; thence N. 30 W., with the E. line of said tract, to its N. E. corner, 1,083 varas; thence N. 60 E., with the N. line of said Ruble league, to the place of beginning.

And to the complainants Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whalen, Robert Whalen, Bridget Whalen, Eliza Whalen, and Catherine O'Neil, it is adjudged and decreed that all the rest and residue of said block C be allotted and set aside to them.

585 It is further ordered, adjudged, and decreed that the following-described portion of said Pedro Zarza 5-league grant, designated as block D on the said map accompanying the said master's report and bounded as follows: Beginning at the N. E. corner of said block A, in the N. line of the Pedro Zarza grant, thence S. 11 E. 446 varas to Godarian's S. E. corner, thence S. 61½ W. 497 varas to the N. E. corner of Peter Gumult survey, thence S. 33 E. 1,359 varas to S. W. corner of this block D, in the N. line of block B; thence N. 60 E. 1,414 varas to Eubank's N. W. corner, thence N. 62 E. 564½ varas to Eubank's N. E. corner, thence S. 28 E. 1,000 varas to Eubank's S. E. corner, thence N. 61 E. 428 varas to J. W. Cook's N. E. corner, thence S. 28 E. 425 varas to J. B. Taylor's N. W. corner, thence N. 61½ E. 1,158 varas to J. B. Taylor's N. E. corner, thence N. 62 E. 1,600 varas to the S. E. corner of block D, in the W. line of block C; thence N. 28 W. 3,147 varas to the N. line of said Pedro Zarza grant for the N. E. corner of said block D, thence S. 62 W. 4,700 varas to the place of beginning—*to* be divided as follows, to wit: To the defendant E. G. Hanrick it is adjudged and decreed that the following portions of said block D be allotted and set aside *to him*, viz:

215 acres, designated on the plat as the Slaughter tract, beginning at the N. E. corner of block D, thence S. 28 E., with the E. line of block D, 800 varas to the S. line of said Slaughter tract; thence S. 62 W., with the said line, 1,472 varas to the S. W. corner of said Slaughter tract; thence N. 28 W., with the W. line of said tract, to the N. W. corner of the same; thence N. 62 E. 1,472 varas to the beginning; also another tract, containing 774 acres, beginning at the N. E. corner of a tract of 300 acres set aside in this partition to the complainants out of this block, said N. E. corner being in the N.
586 boundary line of said Zarza grant, thence following the E. line of
said 300-acre tract S. 28 E. to the S. line of said block D; thence N. 62 E. with said line to the N. E. corner of said Eubank 100-acre tract, from which an elm bears S. 45 E. 6 varas; thence S. 28 E. with Eubank's line 382 varas to corner; thence N. 89¼ E. 483 varas to a point just outside of the fence; thence N. 5¾ E. to a point so that a line run from thence N. 28 W. to the N. line of the Zarza grant and thence S. 62 W. to the place of beginning will include 774 acres of land and also the residence of said E. G. Hanrick; and to the complainants Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whalen, Robert Whalen, Bridget Whalen, Eliza Whalen, and Catherine O'Neil it is adjudged and decreed that the following portions of said block D be allotted and set aside to them, viz: A tract of 300 acres off of the W. end of Hanrick's farm, beginning at the N. W. corner of said block D, which is also the N. W. corner of the Godarian tract, thence S. 10½ E. with his line 443 varas to corner; thence S. 62 W. 497 varas to corner of Peter Gumult's tract; thence S. 33 E. with Gumult's E. line 1,359 varas to corner in N. line of Wren tract; thence N. 62 E. with the S. line of block D to a point so that a line thence N. 28 W. to the N. line of Zarza tract and thence S. 62 W. to the beginning will contain

300 acres of land; also all the rest and residue of said block D not herein allotted to said defendant E. G. Hanrick, containing 1,051 acres.

III.

As to the Antonacio de la Serda 11-league grant on the east side of the Brazos river, it is ordered, adjudged, and decreed that the following-described tracts and portions of De la Serda 11-league grant
be allotted and set aside to the defendants William Brady,
587 Philip O'Brien, and W. A. Patrick, administrator of the es-
tate of Eliza M. O'Brien, deceased, viz: A tract of land containing 165 acres, beginning at the S. E. corner of a 100-acre tract deeded to W. A. J. Nicholson, thence S. 28 E. 557 varas; thence S. 45 W. 1,326 varas; thence N. 28 W. 845 varas to corner in S. line of tract deeded to Nicholson; thence N. 48 E. 513 varas; thence N. 62 E. 770 varas to place of beginning.

Also another tract of land containing 16.4 acres, beginning at the N. E. corner of the survey made for Modwell & Houghton, thence N. 28 W. to the W. line of a 50-acre tract known as the Levy & Rosenthal tract to the N. W. corner of same; thence N. 62 E. 561 varas to the N. E. corner of said 50-acre tract on the bank of Little Sandy creek; thence up Sandy creek to corner; thence S. 62 W. 600 varas to stake; thence S. 45 E. 200 varas to beginning. Also another tract, known as the Hammer's tract, containing $136\frac{4}{5}$ acres, beginning at the N. E. corner of the F. F. Green 100-acre tract, thence N. 28 W. 1,585 varas with the W. line of Taylor tract to corner in Marlin & Groesbeck road; thence S. 34 W. with said road 349 varas to the Ritter 9-acre tract; thence S. 28 E. with his line 329 varas to his S. E. corner; thence S. 62 W. 270 varas to corner in bed of Little Sandy creek; thence down said creek with its meanders to the N. W. corner of F. F. Green 100-acre tract; thence N. 62 E. with line of said tract to beginning, less the Taylor Church tract. Also a tract containing the 2 tract- of land of 70 acres each, sold by Wm. Brady to Wm. McGaughey and James Cohen, beginning at a large pin oak marked X on E. bank of Little Sandy, thence N. 62 E. at 20 varas bed of said branch and 828 varas corner in S. line of F. F. Green tract; thence S. 28 E. 412 varas to corner; thence S. 62 W. to N. E. corner of said James Cohen tract; thence S. 28 E. 450 varas
to stake; thence S. 62 W. 950 varas to corner on bank of
588 Little Sandy; thence up said creek with its meanders to the
beginning.

Also another tract of 227 acres, sold by William Brady to J. D. Oltorf, beginning at the N. W. corner of the Sandy Humphries tract, in bed of Little Sandy creek, thence S. $78\frac{1}{2}$ E. 632 varas to the S. E. corner of said Humphries survey in the W. line of M. Sessum league; thence N. 30 W. 154 varas to N. W. corner of said Sessum league; thence N. 62 E. 1,961 varas to S. E. corner of this survey, crossing Keechie creek at 1,517 varas; thence N. 35 W. 116 varas to Keechie creek, crossing same; thence N. 30 W. 322 varas to N. E. corner; thence S. 60 W. 325 varas; thence S. 77 W. 345 varas to corner; thence N. $28\frac{1}{2}$ W. 620 varas to corner in the S. line of the

T. J. Chambers 5-league survey; thence S. 44¾ W. 884 varas to corner in Ferrell's E. line; thence S. 28 E. to his S. E. corner; thence S. 62 W. with his S. line 869 varas to S. W. corner of Ferrell's tract in bed of Little Sandy; thence with the meanders of the creek to the place of beginning; also a tract conveyed by Wm. Brady to J. D. Oltorf, containing 186¾ acres, beginning at the N. E. corner of a survey for N. J. Morris in bed of Keechie creek, thence S. 62 W. 325 varas to N. W. corner of said survey; thence S. 30½ W. 74 varas to S. E. corner survey made for James Barton; thence N. 28 W. with Barton's line to his N. E. corner in line of La Serda grant; thence N. 62 E. with said line, at 550 varas bed of Keechie creek, 1,350 varas to the N. W. corner of Dwight tract; thence S. 28 E. with W. line of same 988 varas to the corner; thence N. 79½ W. with the McMillan N. line 940 varas to his corner in bed of Keechie creek; thence up said creek with its meanders to place of beginning; also a tract sold by William Brady to J. L. & John La Prelle,
containing 2,530 acres, beginning at the crossing of the narrow-
589 gauge and Marlin & Thornton roads, thence N. 20½ E. 206
varas to the S. E. corner of E. Fike's survey; thence N. 28 W.
with his line 1,162 varas to his N. E. corner; thence N. 62 E. 688 vs. to the S. E. corner of Rickleman's survey; thence N. 28 W. 811 varas to Floyd Smith's survey of 70 acres; thence N. 62 E. 534 varas to the S. E. corner Smith's 70-acre tract *tract*; thence N. 28 W. 295 varas to S. W. corner of Smith's 35-acre tract; thence N. 34 E. 408 varas to S. E. corner of the same; thence N. 56 W. 712 varas to his N. E. corner; thence N. 34 E. 678 varas to S. E. corner of Blakenstane survey; thence N. 56 W. 38 varas to corner; thence N. 62 E. 1,002 varas to N. J. Morris S. E. corner on Keechie creek; thence, following the meanders of the creek downward a distance of 240 varas on a right line, to the S. W. corner of Z. McMillan tract; thence N. 62 E. 580 varas with McMillan's S. line to his corner; thence N. 20 W. 703 varas to William Gameson's W. corner in lower line of Dwight survey; thence N. 76 E. 1,730 varas to N. E. corner of this tract; thence S. 29½ E. 922 varas to S. W. corner of W. D. Barton's tract; thence S. 28 E. 2,030 varas to S. W. corner of G. W. Falkenhagen's tract in N. line of survey occupied by John Parsons; thence S. 62 W. 389 varas to his N. W. corner; thence S. 28 E. 359 varas to stake for corner; thence S. 62 W. 135 varas, corner; thence S. 28 E. 70 varas, corner in Marlin & Thornton road; thence following the center of said road S. 61½ W. 3,485 varas; thence S. 76½ W. 200 varas to center of bridge on Keechie creek; thence S. 61½ W. 150 varas; thence S. 30 W. 184 varas; thence S. 61½ W. 565 varas to the beginning, excepting out of said tract the S. L. Parsons 95-acre tract.

Also a tract of 26½ acres of land sold by William Brady to William Gameson, beginning at the S. E. corner of Dwight survey, thence S. 62 W. with his line 841 varas; thence N. 76 E. 1,108 varas,
corner in W. line of *of* James Gameson survey; thence N.
590 28 W. 208¾ varas, corner; thence S. 62 W. 233 varas to the be-
gining; also another tract of 63 acres sold by William Brady to
James W. Gameson, beginningin the bed of Brushy creek where Mar-

lin road crosses same, thence on a right line meandering the creek N. 28 W. 566 varas, striking Adams' fence 80 varas S. 62 E. from bed of Bushy creek; thence N. 62 E. 846 varas to Adams' S. E. corner; thence S. 28 E. 266 varas; thence S. 36¾ W. 594½ varas; thence S. 49 W. 235 varas to the place of beginning.

Also another tract of 150 acres of land, sold by William Brady to S. E. Bryant, beginning — S. E. corner of Henry Ship survey, thence S. 28 E. 1408 varas, corner in N. line of Forbes' tract; thence S. 62 W. 546 varas; thence N. 28 W. 877 varas, corner; thence N. 62 E. 15 varas; thence N. 28 W. 531 varas; thence N. 62 E. 531 varas to place of beginning.

Also another tract of 65 acres of land, sold by William Brady to V. N. Barton, beginning at the N. E. corner — M. J. Fairy's tract in bed of Bushy creek, thence E. to corner of J. E. Vann's tract; thence S. 830 varas with his line; thence west 1,200 varas, a corner in bed of Bushy creek; thence up creek with its meanders to the place of beginning.

Also another tract containing the 2 tracts of lands sold by William Brady to Henry Ray and Henry Ship, containing 107 acres of land, beginning at the N. E. corner of the William Jolly tract, thence S. 28 E. 543 varas to corner of Isaac Ray tract; thence S. 62 W. 600 varas; thence S. 28 E. to N. E. corner of Bryant's tract; thence S. 62 W., with Bryant's line, 442½ varas; thence N. 28 W. 768 varas; thence N. 62 E. 1,042½ varas.

Also another tract of 616 acres of land, conveyed by William Brady to J. E. Vann, beginning in N. line of L. D. Forbes' tract at S. W. corner Sam. Bell's tract, thence N. 63 W. 680 varas to corner in bed of Big creek; thence N. 40 W. 200 varas to
591 cor. in center of Marlin & Thornton road; thence N. 70 W. 195
varas; thence S. 58½ W. 270 varas; thence S. 56½ W. 580 vs.; thence S. 6½ W. 480 varas; thence S. 62 W. 340 vs., Mrs. Barton's N. E. corner; thence S. 830 varas; thence W. 1,200 varas; thence S. 30 E. 1,378 varas; thence N. 62 E. 350 vrs; thence N. 66 E. 360 varas to Robert Smith's N. E. corner in W. line of R. G. Garrett's tract; thence N. 28 W. with Garrett's line to his N. W. cor. on south bank of Big creek; thence up said creek with its meanders to the point where the Menifee N. line crosses said creek; thence with said line N. 60 E. to the beginning.

Also a tract of 180 acres of land, sold by William Brady to R. G. Garrett, beginning at the N. W. corner of a 218-acre survey owned by R. G. Garrett, thence N. 28 W. 900 varas to a stake on bank of Big creek; thence up said creek with its meanders 850 varas to R. G. Garrett's N. W. corner; thence S. 28 E. 1,614 varas; thence S. 79 W. 890 varas to the beginning.

Also a tract of 94½ acres of land, sold by William Brady to T. J. Parton, beginning at the center of the old ford on Big Sandy creek, thence S. 70½ W. 587 varas to corner in line of Coon's 160-acre tract; thence S. 28 E. 521½ varas to S. E. corner of said Coon's survey; thence N. 62 E. 234 varas to N. E. corner of Albert Jackson's tract; thence S. 28 E. 62 varas to N. W. corner of Jackson's tract; thence N. 82 E. 560 varas to N. E. corner of Ritter tract, in bed of

Sandy creek; thence up the creek, following the meanders, to the beginning.

Brady, No. 14. A.

Also the three tracts of land designated in said master's supplemental report as the 20½-acre tract, known as the F. E. Smith tract, and 108½-acres tract known as the H. L. Parton tract, and a 28-acre tract known as the A. T. Fairy tract, the same
592 being the eighth, ninth, and tenth tracts mentioned in said supplemental report.

The same being described and embraced in the following boundaries:

Said 20½-acre tract being described as follows:

Beginning at the S. W. corner of said Fairy tract, in the bed of Keechie creek, from which an elm bears S. 50 E. 5⅕ vrs., thence N. 57 W. 499 vrs., a post oak bears S. 70 W. 2⅗ vrs., thence N. 33 E. 440 vrs. to the W. line of the F. E. Smith 20-acre tract, thence N. 56 W. 507 vrs. to corner, a double mesquite bears N. 62 E. 1½ vrs., thence S. 34 W. 294 vrs. to corner of Smith's 35-acre tract, the same being a corner of the La Prelle purchase; thence N. 56 W. 772 vrs., thence N. 34 E. with S. line of Frazier tract and S. line of Blankenstein tract to S. E. corner of Mr. Blankenstein, from which a large mesquite marked X bears N. 22 E. 29 vrs.; thence S. 56 E. 772 vrs., corner in the N. W. line of McClanahan's tract, from which a post oak marked H bears N. 46½ W. 33⅖ vrs.; thence S. 34 W. 60 vrs. to the W. corner of said McClanahan tract, thence S. 56 E. with his line to the bed of Keechie creek in McClanahan's S. W. corner, thence down the creek with its meanders to the beginning.

It is further ordered, adjudged, and decreed that the following-described tracts and portions of De la Serda 11-league grant be allotted an- set aside to the defendant E. J. Gurley, viz: A tract of land, containing 50 acres, known as the H. L. Parton tract, beginning at the N. E. corner of the 31-acre tract of land surveyed by E. G. Hanrick for G. W. Parton in the E. line of the La Serda grant, thence S. 62 W. to the N. W. corner of survey made for A. J. Parton, thence N. 28 W. 458 vrs. to the N. line of the La Serda grant, thence N. 62 E. 600 vrs. along the side line to the place of beginning.

Also another tract of land, containing 340 acres, beginning
593 at the S. E. corner of the survey made for Brock in the E. line of the La Serda grant, thence S. 28 E. 1,785 vrs. to the bed of Big creek, following the meanders of Big creek down to a corner; thence S. 62 W. 160 vrs. to the S. E. corner of the Simmons 126-acre tract, thence N. 28 W. 801 vs., passing N. E. cor. of said tract at 650 vs.; thence N. 1,568 vrs. to S. W. corner of said Brock survey; thence N. 62 E. 600 vrs. to place of beginning; also another tract of 126 acres of land, known as the J. T. Simmons tract, beginning at the N. W. corner of Sam. Bell tract, thence N. 62 E. with said Bell's line 1,100 vrs., thence N. 28 W. 650 varas, thence S. 62 W. 1,100 var-s, thence S. 28 E. 650 varas to place of beginning; also another tract of land, containing 100 acres, designated on the map as Mc-

Corkill tract, beginning at the S. E. corner of the S. B. Bryant tract, thence N. 28 W. 940 varas to corner of Isaac Ray tract, thence N. 68 E. with S. line of Isaac Ray tract 600 varas to S. W. corner of Yates tract; thence S. 28 E. 940 varas, thence S. 62 W. 600 varas to place of beginning; also another tract of 103.3 acres, designated on the map as Wm. Jolly tract, beginning at the N. W. corner of the Yates tract, in the E. line of Isaac Ray tract, thence N. 28 W. 783½ varas to corner in road, thence N. 62 E. 220 varas, thence S. 28 E. 150 varas, thence N. 62 E. 150 varas, thence N. 28 W. 150 varas to corner S. line of Davis tract, thence S. 84½ E. 734 varas, thence S. 28 E. 340 varas, thence S. 62 W. 984 varas to place of beginning; also another tract, designated on the map as James Davis 117½-acre tract, beginning on the N. line of All-sorts school-house tract S. 62 W. 25 varas from N. E. corner of said lot, thence N. 28
W. 1,000 varas to a corner, from which an elm marked X bears N.
63¾ E. 13¾ varas; thence N. 62 E. 565 varas to corner, from
594 which a double elm marked X bears N. 80 E. 5⅞ varas;
thence S. 28 E. 1,360 varas to corner in Bill Jolly's N. line,
thence N. 84½ W. 653 varas to N. E. corner of said school-house lot, thence S. 62 W. 25 varas to place of beginning.

Also another tract of land of 61 acres, designated on the map as Mrs. Stahl tract, beginning at the upper corner of tract owned by her on Bushy creek, thence S. 60 W. with her line 750 varas to corner, from which two elms bears N. 75 W. 54 varas; thence N. 28 W. 450 varas, thence N. 62 E., at 463 varas past N. J. Fairy's corner, at 920 varas corner on creek; thence down the creek with its meanders to the beginning.

Also another tract of 54 acres of land, designated on the map as W. B. Wren tract, beginning at the N. E. corner of the M. Sessum league, thence N. 28 W. to bed of Cedar creek; thence down said creek with its meanders to where the creek crosses N. line of said Sessum's league; thence N. 60 E. with the N. line of said league to the place of beginning; also another tract of 54 acres of land, designated on map as E. F. Thomas tract, beginning in the N. line of the Sessums league just W. of Cedar creek, thence N. 28 W. 1,353 varas; thence N. 62 E. 420 varas; thence S. 28 E. to the bed of Cedar creek; thence down said creek with its meanders to a point where the same crosses said Sessum's league line; thence S. 60 W. with said line to the place of beginning; also another tract of 160 acres of land, designated on map as William Cross survey, beginning at the S. E. corner of the Oltorf 277-acre tract, thence N. 28 W. 945 varas; thence N. 60 E. 970 vs.; thence S. 28 E. 945 varas to corner in N. line of Sessum's league; thence S. 60 E. with said line 957 varas to place of beginning.

Also another tract of 82 acres of land, beginning where the W.
line of the Courtney league crosses the Sandy creek, thence
595 N. 30 W. with said line 850 varas, stake in the S. E. line of
the Chambers tract; thence N. 45 E. with said line 430 varas
to stake, from which a post oak 20 inches in diameter bear S. 34½ W. 6⅘ varas; thence S. 53 E. 820 varas, stake in bed of Sandy creek,

from which an elm bears N. 85 W. 10 varas; thence down Sandy creek with its meanders 730 varas on a right line to beginning.

Also another tract of 100 acres, designated on the map as the Robert Smith tract, on Keechie creek, beginning on the E. bank of said creek, on a small ash, from which a post oak 18 inches in diameter bears S. 11 W. 7 varas, thence N. 62 E. 316 varas, stake, from which a post oak 12 inches in diametèr bears S. 8 W. 7 varas; thence S. 28 E. 1,000 varas, stake, from which a post oak 12 inches in diameter bears S. 78 W. 2 varas; thence S. 62 W. 956 varas to said creek; thence up said creek with its meanders to beginning.

Also another tract of 112 acres of land, designated on the map as John Parson's tract, beginning at lower corner of survey in the name of Gus. Stehl, on W. bank of Bushy creek, thence S. 81 W. 363 varas to Stahl's S. W. corner; thence S. 62 W. 670 varas; thence S. 28 E. 424 varas; thence S. 80 E. 810 varas to the bank of said creek; thence up said creek with its meanders to the place of beginning.

Also another tract of 76½ acres, designated on the map as N. J. Morris tract, beginning at a corner in bed of Keechie creek about 500 vrs. below the upper line of the La Serda grant, thence S. 62 W. 320 varas; thence S. 28 E. 1,000 varas; thence N. 62 E. 444 varas, corner on the W. bank of said creek, from which a pin oak marked X bears N. 45 W. 2⅘ varas; thence up said creek with its meanders to beginning.

Also another tract of 39½ acres of land, designated on map as
McCorkili survey, beginning at N. W. corner of James Barton tract,
in N. line of La Serda grant, thence S. 28 E., following a line
595 of the Waco and Groesbeck road; thence S. 34 W. with line
of center of said road to S. E. corner of Wilford tract; thence
N. 28 W. to E. line of Wilford tract to corner in N. line of La Serda
tract; thence N. 62 E. with said line to beginning.

Also another tract of 100 acres of land, designated on the map as P. J. Smith's survey, beginning in the N. line of La Serda grant at N. W. cor. of Wilsford tract, thence S. 26 E. with Wilsford's line to N. E. corner of H. Rickleman tract, thence S. 62 W. with his line to corner in N. line of Curry tract, which is the S. E. corner of the Owens tract; thence N. 28 W. with the E. line of Owens' tract to corner in N. line of La Serda tract, thence N. 62 E. to place of beginning.

Also another tract of 68¾ acres, designated on the map as J. T. Owens' tract, beginning at the S. W. corner of said Smith tract, thence N. 28 W. with said Smith tract to corner in N. line of La Serda grant, thence S. 62 W. 1,064 varas to corner in E. line of Goodrich & Clarkson's pasture tract, from which a mesquite 7 inches —, marked X, bears N. 34½ E. 24½ varas, a double elm bears N. 84½ E. 89 varas; thence S. 20¾ E. to N. W. corner of Mrs. Doyle's tract, thence following the N. line of Mrs. Doyle's tract eastwardly to N. W. corner of Curry tract, thence N. 62 E. with his N. line to the place of beginning.

Also another tract of 346 acres of land, beginning at the N. W. corner of Curry tract, thence S. 28 E. with said Curry line 1,075 varas, bed of Little Sandy creek; thence down said — with its meanders to corner of Rickleman's 10-acre tract, thence with his line

S. 62 W. to his N. W. corner, thence S. 28 E. to corner in N. line of Blankenstein's survey, thence S. 62 W. to his N. W. corner, thence S. 28 E. to Blankenstein's W. line to corner in Marlin and Groesbeck road, thence S. 62 W. with the line of said road to corner
597 of H. Rickleman's timber tract, thence N. 28 W. with E. line of said tract 582 varas, thence S. 62 W. 283 varas to Carter's E. line, thence N. 28 W. with said line 314 varas to line of Goodrich & Clarkson's tract, thence 62 E. with said line to their S. E. corner, thence 20¾ W. 958 varas to S. W. corner of said Owens' 68¾-acre tract, thence with Owens' S. line to the place of beginning.

Also another tract of 100 acres, designated on the map as Jacob Hauserman and David Eiserman tract, beginning at N. E. corner of Scott tract, thence W. with the N. line of Scott tract 32 feet, thence N. 28 W. with the E. line of Tom Stuart 190 feet to N. E. corner of same, thence E. 520 varas to stake, from which a mesquite, marked X, bears S. 26½ E. 2½ varas; thence N. 28 W. to a corner in the Marlin and Groesbeck road, thence N. 62 E. with said road 1,078 varas to Nicholson's N. W. corner, thence S. 28 E. with Nicholson's W. line 825 varas to his S. W. corner, thence S. 62 W. 854 varas with N. line of Lane tract to his N. W. corner, thence S. 1¼ W. with W. line of Lane tract 175 varas, thence W. 400 varas to E. line of Scott tract, thence N. with said line 475 varas to the place of beginning.

Also another tract of 418 acres, designated on the map as part of Edward McGary one-quarter league, beginning at the S. W. corner of Elijah Moore survey in W. line of said quarter league, thence S. 30 E. with said line to corner in the lower line of La Serda grant, thence N. 62 E. with said line to a point where it intersects the E. line of the said McGary quarter, thence N. 30 W. with said line, the S. E. corner of Ellis Stuart tract, thence S. 62 W. to the place of beginning.

Also another tract of 87 acres of land, beginning at the S. W. corner of Carter's 50-acre tract in bed of Sandy creek, thence N. 62 E. 575 varas to the W. line of Rickleman's timber tract,
598 thence S. 28 E. 950 varas, thence S. 62 W. 92 varas to N. E. corner of T. D. Reed tract, thence S. 85 W. 732 varas to corner in bed of Sandy creek, thence up said creek with its meanders to the place of beginning.

Also another tract of 208 acres of land, beginning at the N. W. corner of Elijah Moore's survey, thence N. 62 E. with his line to his N. E. corner, thence S. 28 E. 900 varas to his S. E. corner, thence N. 62 E. to the S. W. corner of Ellis Stuart's tract, thence N. 28 W. 1,425 vs. to the S. line of Lane tract, thence S. 44 W. 2,150 varas to the place of beginning.

Also another tract of 493 acres of land, beginning at a point in the S. line of the Lane tract, which is also the N. E. corner of the Henry Stuart tract, thence S. 53 E. 810 varas to bed of Big Sandy creek, thence following the meanders of said creek up to the mouth of Little Sandy creek, thence up the meanders of Little Sandy creek to a point where it crosses the James Riddle S. line, thence S. 62 W. to his S. W. corner, thence N. 28 W., intersecting the line of Lane tract, thence S. 44 W. with said line to the place of beginning.

Also another tract of 90 acres of land, designated on map as the Sullen's tract, beginning at the S. E. corner of the McCorkill 100-acre tract, thence N. 38 W. with the line of said tract 46¼ varas to cor., from which a mesquite 10 inches in diameter bears S. 28 E. 2¾ varas, thence N. 62 E. 653 varas, thence S. 28 E. 445¼ varas to corner in N. line of Simmons' tract, thence S. 62 W. with said line 482 varas to the N. W. corner of said tract, gum-elastic marked X bears N. 21¾ E. 2¾ varas, thence S. 28 E. 50 varas to a corner, from which an elm 9 inches in diameter marked X bears N. 42¼ W. 20 varas, thence S. 62 W. 637½ varas to corner in the E. line of Forbes' survey, from which a double post oak marked X bears N. 50½ E. 1¾ varas, thence N. 28 W. 448¾ varas to N. E. corner of said Forbes' survey,
599 thence N. 62 E. 466½ varas to the place of beginning.

Also another tract of 575 acres of land, beginning at the N. W. corner of the T. J. Fairy 70-acre tract, in Marlin & Thornton road, thence S. 62 W., following the line of said road, 2,924 varas to corner, being N. W. corner of the A. J. Owens 82-acre tract, thence S. 28 E., at 365 varas past the N. E. corner of E. F. Thomas tract and at 531 varas corner of this tract, thence N. 62 E. 813 varas, thence S. 16½ E., corner in bed of Cedar creek, thence S. 28 E. 760 varas, thence S. 81¼ E. 550 vrs., thence N. 530 varas, thence N. 62 E. to the N. W. corner of Mrs. Stahl's 50-acre tract, thence N. 28 W. 493 varas to the N. W. corner of her 61-acre tract, thence N. 62 E. with her line to the S. W. corner of said N. J. Fairy 70-acre tract, thence N. 28 W. with his W. line 842 varas to the place of beginning.

Also another tract of 71 acres, designated on map as Isaac Ray tract, beginning at the N. W. corner of the McCorkill 100-acre tract, thence N. 28 W. to the S. W. corner of the Henry Ray tract, thence N. 62 E. with S. line of said tract 600 varas to corner in W. line of Jolly tract, thence S. 28 E. to S. W. corner Yates tract, thence S. 62 W. with N. line of McCorkill tract to the place of beginning.

Also another tract of 225 acres, designated on map as William Gassaway tract, beginning at Long's S. E. corner in E. line of La Serda grant, thence S. 28 E. with said line 812 varas, thence S. 60 W. 95 varas, thence S. 30 E. 1,013 varas to Duncan's N. line, thence S. 60 W. with said line 615 varas, corner, from which an elm 12 inches in diameter bears N. 60 E. 20 varas, thence N. 28 W. 1,801 varas to corner in Bell's line, thence N. 58 E. with his line and Long's line to the place of beginning; also another tract of 212 acres of land on Big creek, designated on the map as Sam. Parson's
600 tract, and allotted to said E. J. Gurley in the supplemental
report of the master filed in this cause and described as follows, to wit: Beginning at a point on the E. line of the Sessums league where the same crosses Big creek, thence N. 30 W. with said line 1,265 vrs. to the S. W. corner of the James Meyers tract; thence N. 81¼ E. 550 vrs.; thence N. 530 vs.; thence N. 62 E. to the N. W. corner of lot No. 17; thence S. 28 E. 1,896 vrs. to bed of Big creek; thence down said creek with its meanders to the place of beginning;

also another tract of 35 acres of land designated on map as the Floyd Smith tract, beginning at the N. E. corner of Floyd Smith's 70-acre tract, thence N. 55½ W. with Ritter's E. line 209 vrs.; thence N. 34 E. 198 vrs., the N. W. corner of H. L. Parton tract; thence S. 56 E. to Parton's W. line 772 vs. to Parton's S. W. corner; thence S. 34 W. 408 vrs. to corner in E. line of Smith's 70-acre tract, from which a double mesquite bears S. 36 W. 6 vrs.; thence N. 28 W. 271 vrs.; thence N. 43 W. 328 vrs. to the place of beginning; also a tract of 40 acres of land designated as the R. M. Loggins tract, beginning in the E. line of the McCorkle 100-acre survey, thence N. 62 E. 485 vrs.; thence S. 28 E. 500 vrs. to corner in N. line of Sullins' tract; thence S. 62 W. 485 vrs. to corner in E. line of McCorkle tract; thence N. 28 W. to McCorkle's line to the place of beginning; also another tract of 40 acres of land known on the plat as the James Smith tract, beginning at the N. E. corner of the Henry Denson tract, thence S. 78 E. 500 vrs. to the corner of S*an*. Gamble's 20-acre tract; thence S. 12 W. 431 vrs., Graham's N. E. corner; thence N. 78 W. with his line to corner in Denson tract; thence N. 12 W. to the place of beginning.

Also an undivided interest of 360 acres of land out of the 1,675-acre survey sold by Hanrick to Goodrich & Clarkson. Said 1,675 acres are described as follows: Beginning at the N. E. corner
601 of the survey designated on the map as John Ashworth tract, in the bed of Big Sandy creek, thence S. 62 W. 940 vrs. to the N. W. corner of said tract; thence S. 28 E. 400 vrs. to the S. W. corner of said tract; thence S. 62 W. to T. Watson's N. W. corner; thence S. 28 E. 1,045 vrs. to Watson's S. W. corner on the large post-oak tree standing in the middle of the Marlin & Groesbeck road; thence S. 62 W. with said road 2,849 vrs. to S. E. corner of the H. G. Carter *his* pasture; thence N. 28 W. with Carter's E. line 1,289 vrs. to his N. corner of the railroad right of way; thence N. 19½ E. 522 vrs.; thence N. 13½ W. 800 vrs. to corner in the N. line of the La Serda grant; thence N. 62 E. with said N. line 4,526 vrs. to the N. W. corner of 68¾-acre tract in the name of J. G. Owens; thence S. 20¾ E. 958 vrs. to stake; thence S. 12 E. 361 vrs.; thence S. 60 W. 469 vrs. past Carter's N. E. corner, 940 vrs. to corner in bed of Big Sandy creek; thence up bed of said creek with its meanders to the place of beginning.

It is further ordered, adjudged, and decreed that the following-described tracts and portions of said De la Serda 11, eleven, league grant be allotted and set aside to the complain*t*ants, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, Peter Whalen, Robert Whelan, Bridget W*h*alen, Eliza Whelan, and Mary Whelan, viz:

One tract of 355 acres of land designated on the map as T. D. Read tract, beginning at the N. W. corner of the survey owned by N. Adams, in the bed of Bushy creek, thence N. 62 E. 736½ vrs. past Adams' N. E. corner, at 2,212 vrs. to corner in W. line of J. O. Davis tract, from — a mesquite 15 inches in diameter, marked S, bears N. 61 W. 8⅕ vrs.; thence N. 28 W. 130 vrs. to Davis' N. W. corner; thence

N. 62 E. at 565 vrs., Davis' N. E. corner, double elm marked
602 X b'rs N. 78½ E. 5⅘ vrs.; thence S. 28 E. 130 vrs.; thence
N. 62 E. 875 vrs. to stake, from which an elm marked V bears S. 64¾ W. 9⅕ vrs.; thence N. 28 W. 554 vrs., corner N. line Laserda grant; thence S. 62 W. with said line to the bed of Bushy creek; thence down the creek with its meanders to the place of beginning; also a tract of land containing 231 acres, designated on said map as No. 2, beginning at the N. E. corner N. Adams tract, thence N. 62 E. with line of T. D. Reed tract 1,478 vrs. to corner in W. line of Davis tract; thence S. 28 E. 878 vrs. to Davis' S. W. corner; thence S. 62 W. 1,478 vrs.; thence N. 28 W. 878 vrs. to the place of beginning.

Also a tract containing 374 acres and designated on said map as No. 3, beginning at Davis' S. E. corner, thence S. 86¼ E. 1,350 vrs., S. W. corner of Brock tract; thence N. 28 W. 2,520 vrs. to corner in N. line of La Serda grant; thence S. 62 W. 350 vrs. N. E. corner of Read's tract; thence S. 28 E 554 vrs.; thence S. 62 W. 875 vrs.; thence S. 28 E. 1,230 vrs. to place of beginning. Also a tract of land containing 190 acres designated on said map as No. 4. beginning at the S. E. corner of No. 3, thence N. 28 W. 2,062 vrs. to the S. W. corner of H. L. Parton tract; thence N. 62 E. 400 vrs. to N. W. cor. G. W. Parton tract; thence S. 28 E. 921 vrs., his S. W. corner; thence N. 62 E. 200 vrs., corner in E. line of Laserda grant; thence S. 28 E. 1,141 vrs.; thence S. 62 W. 600 vrs. to the place of beginning. Also a tract of land containing 374 acres, the same being designated on said map as No. 5, beginning at the S. W. corner of No. 4, thence S. 1,568 vrs.; thence S. 28 E. 151 vrs., N. E. corner of the Simmons tract; thence S. 62 W. 620 vrs., S. E. corner Sullins tract; thence N. 28 W. 450 vrs., his N. E. corner; thence S. 62 W. 200 vrs., S. E. corner of Loggins tract; thence N. 28 W. 500 vrs., his N. E. corner; thence S. 62 W.
455 vrs., his N. W. corner; thence N. 28 W. 445 vrs., S. W.
603 corner of Yates tract; thence N. 62 E. 725 vrs., his S. E.
corner; thence N. 28 W. 505 vrs., his N. E. corner; thence N. 62 E. 174 varas, S. E. cor. Jolly tract; thence N. 28 W. 340 vrs., corner in S. line of lot 3; thence S. 86¼ E. to the place of beginning. Also a tract containing 253 acres and designated on map as No. 6, and a tract containing 118 acres, designated on said map as No. 7; also a tract containing 63½ acres, designated on said map as No. 8; also a tract containing 91 acres, designated on said map as No. 9; also a tract containing 100 acres, designated on said map as No. 10, within the following boundaries: Beginning at a point in the W. line of the Sam. Bell tract, a point in the Waco and Thornton road, and is also the N. E. corner of the J. E. Vann tract, thence N. 40 W. 800 vrs. to the N. W. corner of Bell tract; thence N. 28 W. 650 vrs., N. W. corner of Simmons tract; thence S. 62 W. 600 vrs., the S. W. corner Sullins tract; thence S. 28 E. 472 vrs., S. E. corner Forbes tract; thence S. 62 W. 627 vrs., S. W. corner Forbes tract; thence S. 28 W. 920 vrs., N. W. corner of said tract in S. line of the Bryant tract; thence S. 62 W. 95 vrs., S. W. corner of Bryant tract; thence N. 28 W. with Bryant's W. line, N. W. corner of Bryant's 158-acre tract; thence N. 62 E., S. W. corner of Henry Ship tract;

thence N. 28 W. 768 vrs., N. W. corner of Henry Ship tract in S. line of No. 2; thence N. 62 W. 130 vs. to S. W. cor. No. 2; thence S. 36 ¾ W. along the road 640 vrs., S. 49 W. 235 vrs. along said road to Brushy creek; thence down Brushy creek with its meanders to the mouth of Pin-oak creek; thence up said creek with its meanders to N. W. corner of Stahl tract; thence N. 62 E. 855 vrs., N. E. corner of said Stahl tract; thence S. 28 E. 255 vrs., corner in Marlin & Thornton road; thence N. 58 E. with J. E. Vann's N. line to the place of beginning. Also a tract of 41 acres and designated on said map as No. 11, beginning in the bed of Bushy creek, N. W. corner of No. 10, being the S. W. corner of J. W. Gameson tract,
604 thence S. 72 W. along the road 500 vrs. to corner N. E. — J. L. & John La Prelle tract; thence S. 28 E. 440 vrs., N. W. corner of W. D. Barton tract; thence N. 62 E. 455 vrs. to Brushy creek; thence up said creek to the place of beginning.

Also a tract of 132 acres, designated on said map as No. 12, beginning at the S. E. corner of W. D. Barton's tract in bed of Brushy creek, thence S. 62 W. 784 vrs. to Barton's S. W. corner; thence S. 28 E. 848 vrs. to corner of Dave Parson's tract; thence N. 62 E. 948 vrs. to his N. E. corner in bed of Bushy creek; thence up said creek to the place of beginning.

Also a tract containing 72 acres and designated on said map as No. 14, beginning at the N. E. corner of the Gus Stahl tract in bed of Brushy creek, thence S. 62 W. with his N. line to his N. W. corner; thence S. 28 E. 400 vs. to corner in N. line of John Parson's tract; thence S. 62 W. with said line 287 vrs. to one of La Prelle's corners; thence N. 28 W. 652 vrs. to S. W. corner of Dave Parson's tract; thence N. 62 E. 1,230 vrs., bed of Bushy creek; thence down said creek to place of beginning.

Also a tract conta*n*ining 35 acres and designated on said map as No. 15, beginning at the S. E. corner of the V. M. Parson tract, 65 acres, and also J. E. Vann's lines, thence W. with Mrs. Barton's line to her S. W. corner, bed of Bushy creek; thence down the creek to S. W. corner of this tract; thence E. 631 vrs.; thence N. to the place of beginning.

Also a tract of land containing 153 acres and designated on said map as No. 16, and a tract of land containing 55 acres and designated on said map as No. 17, within the following boundaries: Beginning at the S. E. corner of William Kimbrough 150-acre tract in the bed of Big creek, thence N. 28 W. 1.032 vrs., Kimbrough's N. E. corner; thence S. 62 W. 730 vrs., his N. W. corner; thence N. 28 W. 536 vrs., corner in S. line of tract set aside to Gurley; thence N. 28 W. 536 vrs. corner in S. line of tract set aside to Gurley; thence 62 E. 563 vrs., corner in Mrs. Stahl's W. line; thence S. 28 E. 380 vrs., her S. W. corner; thence N. 62 E. 750 vrs., her S. E.
605 corner; thence S. 28 E. to the bed of Big creek; thence down said creek to the beginning.

Also a tract of land containing 108 acres and designated on said map as No. 18, beginning at the point in the bed of Big creek where the E. line of the Sessums league crosses the same, thence S. 30 E. 840 vrs., N. W. corner of Hunnicutt tract; thence N. 60 E.

852 vrs., his N. E. corner; thence N. 25 W. 500 vrs., bed of Big creek; thence down said creek to the beginning.

Also a tract of land containing 35 acres and designated on said map as No. 19, beginning at the S. E. corner of E. F. Thomas tract in bed of Cedar creek, thence N. 28 W. 452 vrs.; thence N. 62 E. 813 vrs.; thence S. 16¼ E. 315 vrs. to the bed of Cedar creek; thence down said creek to beginning.

Also a tract of land containing 73 acres and designated on said map as No. 21, beginning at the S. W. corner of N. J. Morris tract in the N. line of the La Prelle tract, thence N. 28 W. to the S. E. corner of a 60-acre tract in the name of A. D. Smith; thence S. 62 W. to corner in Blankenstein's line; thence S. 56 E. to Blankenstein's S. E. corner in La Prelle's N. line; thence N. 62 E. with La Prelle's line to the beginning.

Also a tract of land containing 195 acres and designated on said map as No. 22, beginning at a point in bed of Bushy creek where the Laserda N. line crosses the same, thence S. 62 W. 575 vrs., N. E. corner of Dwight tract; thence S. 28 E. 1,252 vrs., Dwight's S. E. corner; thence N. 62 E., 233 vrs.; thence N. 28 W. to the N. W. corner of James Gameson tract of 100 acres; thence N. 62 E. with Gameson N. line to his N. E. corner in bed of Bushy creek; thence up said creek to beginning.

Also a tract of land containing 662 acres, the same being designated on the said map as No. 24, beginning at a point in the S. line of the Laserda grant where it intersects the W. line of the Courtney league, thence N. 30 W. to the S. W. corner of Julius Green tract; thence N. 62 E. with his line and the 606 line of the Ben. Moore tract to the S. E. corner of Dan. Gamble 20-acre tract; thence N. 12 E. with E. line 488 vrs. to a corner in Dan. Humphries' line; thence S. 78 E. with Dan. Humphrey's S. line to his corner in the W. line of the Sessum league; thence S. 30 E. to the N. E. corner of W. S. Hunnicut tract; thence N. 45 W. with the turnpike road 370 vrs.; thence S. 62 W. 462 vrs.; thence S. 30 E. 686 vrs. to corner in the S. line of the Laserda grant; thence S. 62 W. with said line to the place of beginning; also a tract of land containing 516 acres and designated on said map as No. 26, beginning at the N. E. corner of the 16-acre tract, sold to Wilson Hammers by William Brady, in the bed of Little Sandy creek, thence S. 62 W. 601 vrs. to W. corner of said Hammers tract; thence S. 28 E. with his line to the E. line of George E. Lane 2,208-acre tract; thence S. 45 W. 420 vrs., Sandy creek; 1,155 vrs. to S. E. corner tract set aside to William Brady; thence N. 28 W. 1,288 vrs., N. E. corner of Nicholson tract in Marlin & Groesbeck road, N. 62 E. with said road 823 vrs. to the W. line of the Watson 13-acre tract; thence S. 28 E. with his line to his S. W. corner; thence N. 84 E. with said Watson line 328 vrs. to his corner in bed of Sandy creek; thence down said creek to the S. W. corner of T. D. Read 100-acre tract; thence N. 85 E. 727 vrs. to Read's S. E. corner; thence N. 5 E. 750 vrs., Read's N. E. corner; thence N. 62 E. 92 vs.; thence N. 28 W. 376 vs. to corner in road; thence N. 62 E. 584 vrs. with said road; thence N. 34 E. 426 vrs. to bed of Little Sandy

creek; thence down said creek with its meanders to beginning.
(The boundaries above given also include a tract of land containing
192 acres and designated on said map as No. 77.) Also a tract of
land containing 199 acres and designated on said map as No. 30,
beginning at a point in the bed of Little Sandy creek where
607 the N. line of the Riddle tract crosses the same, thence N. 62
E. 545 vrs., N. E. corner of said tract; thence S. 28 E. 328
vrs. to corner in Oltorf line; thence N. 44¾ E. with his line 330 vrs.;
thence N. 28 E. 612 vrs. to the bed of Pin-oak creek along the W.
line of the Casey tract; thence following said creek up with its
meanders to N. W. corner of the R. M. Casey tract of 49 acres;
thence N. 62 E. with his N. line 465 vrs., his N. E. corner within
Fikes' W. line, N. 28 W. with said line 297 vrs., bed of Little Pin-oak
creek; thence up said creek to the N. W. corner said Fikes' survey;
thence N. 62 E. with said line of 180 vrs. to S. W. corner of Frazier's
42-acre tract; thence N. 28 W. to Frazier's line 295 vrs. to S.
E. corner of James Taylor 100-acre tract; thence S. 62 W. 550 vrs.,
his S. W. corner; thence S. 28 E. 505 vrs., S. E. corner of F. F.
Green's 100-acre tract; thence S. 62 E. with his line 373 vrs., N. E.
corner of McGaugey tract; thence S. 28 E. 412 vrs., his S. E. corner;
thence S. 62 W. 157 vrs., N. E. corner of James Cohen tract;
thence S. 28 E. 450 vrs., S. E. corner of said tract; thence S. 62 W.
with said S. line 950 vrs., corner and bed of Little Sandy creek;
thence down said creek to place of beginning; also a tract of land
containing 335 acres, the same including the 80-acre Cohen tract,
designated as tract 109 in Exhibit H of said master's report, and
also 255 acres, the same being a part of the first tract of three hundred
and eighty-six acres mentioned in said master's supplemental
report, beginning at the N. E. corner of a tract of 131 acres, part of
the same 386 acres of that land allotted to E. G. Hanrick at a point
in the W. line of the E. F. Thomas tract 821 vrs. N. 28 W. from
the S. E. corner of the said Thomas tract for a corner of this tract,
thence N. 28 W. to N. W. corner of said Thomas tract; thence N.
62 E. 420 vrs. to N. E. corner of Thomas tract; thence N. 28 W.
365 vrs., corner in the S. line of the La Prelle tract; thence
S. 62 W., following the S. line of the La Prelle tract to
608 his S. W. corner; thence N. 20½ E. 206 vrs. to Fikes' S. E.
corner, thence S. 62 W. 934 vrs. to R. M. Casey's E. line,
thence S. 28 E. 987 vrs. to corner of Oltorf tract, thence N. 77 E. 345
vrs., another corner of Oltorf tract; thence N. 60 E. 325 vrs. to N.
E. corner of Oltorf's tract in W. line of Cross tract, thence N. 28 W.
with said line to N. W. corner of said tract, thence N. 60 E. 957 vrs.
to his N. E. corner, thence S. 28 E. with his E. line to the N. W.
corner of the aforesaid 13-acre tract, same being 821 vrs. N. 28
W. from S. E. corner of said Cross tract; thence N. 60 E. 901 vrs. to
place of beginning; also a tract of land, designated on said map as
the Gus. Stahl tract, containing 100 acres of land, beginning at the
N. W. corner of the V. M. Barton tract in bed of Bushy creek, thence
E. 584 vrs., thence N. 62 E. 340 vrs., thence N. 6½ E. 490 vrs., thence
N. 28 W. 255 vrs., thence S. 62 W. 755 vrs. along S. line of No. 7 to

bed of Pin-oak creek, thence down said creek to its junction with Bushy creek, thence down Bushy creek to the place of beginning.

And it is further ordered, adjudged, and decreed that the following-described lands, parts, and parcels of the said De la Serda 11-league grant be set off and partitioned to the def't E. G. Hanrick:

First. One tract of 95 acres of land, designated on the plat as the S. L. Parson, Jr., survey, beginning at the N. E. corner of the Fikes 126-acre survey, thence N. 62 E., thence S. 28 E., thence S. 62 W. to said Fikes' E. line, thence N. 28 W. to include the improvement of the said S. L. Parsons and to include 95 acres of land, and all the rest and residue and remainder of the said Antonacio de la Serda grant not herein allotted and set forth to E. J. Gurley or to the complain*t*ants herein or to the def't- William Brady, Philip O'Brien, and W. A. Patrick, administrator of the
609 estate of Eliza M. O'Brien, deceased, said residue including 6,841 acres of land on said grant sold by said Hanrick (E. G.) before the institution of this suit and occupied by persons not parties to this suit, and also the lands conveyed by E. G. Hanrick by way of compromise with adverse claimants before the institution of this suit, shall be, and the same is hereby, allotted to the def't E. G. Hanrick.

It is further ordered, adjudged, and decreed that the title to the several tracts of land to each of the parties be vested in them respectively in several*i*ty as herein decreed, and the standing master, the Hon. A. S. Lathrop, is ordered and directed to make and execute deeds conveying to the several parties the lands herein allotted to them in accordance with the terms of this decree; and it is further ordered, adjudged, and decreed that A. S. Lathrop be, and he is hereby, appointed commissioner to sell the two tracts of land in Liberty county, in the State of Texas, being the same lands mentioned in the decree of this court entered on the 10 day of December, 1888, in this cause, which by the consent of the parties is withdrawn from partition, and he will sell the lands in front of the court-house door, in the town of Liberty, to the highest bidder for cash, at public outcry, after giving the notice that is required by law for sale of lands under execution, and that he as such commissioner shall execute and deliver conveyances to the purchaser or purchasers at said sale upon their complying *upon* the terms of sale, and out of proceeds of such sale he shall pay, first, the costs of said sale and three per centum commission on account of the sales, not to be less than $150.00, and the remainder he shall pay over to the parties herein according to their several interests, viz: E. J. Gurley, one-third; to the complain*t*ants herein, two-ninths; to the def'ts Wm. Brady, Philip O'Brien, W. A. Patrick, as administrator of
610 the estate of Eliza M. O'Brien, deceased, two-ninths, and to the def't E. G. Hanrick, two-ninths. It is also ordered that the*i*r be costs in this case, the sum of $75.50, to be paid to F. A. Porter, county surveyor of Falls county, for services performed by him in making this partition.

And it is also ordered that the*i*r be taxed up as costs in this suit the sum of fifteen hundred dollars for the services of the master in this cause. All costs are to be taxed by the clerk and all costs to be paid by the parties in accordance with their several interest-as herein specified, for which, upon failure to pay same, they may have their execution, and thereupon the def't E. G. Hanrick in open court, all parties being present, prayed an appeal to the Supreme Court of the United States, which said appeal is hereby allowed, and the appeal bond of said defendant Hanrick is fixed at eight thousand dollars; and thereupon the complain*t*ants, Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Catherine O'Neil, Peter Whalen, Bridget Whalen, Mary Whelan, Eliza Whalen, Robert Whalen. all parties being present, prayed an appeal to the Supreme Court of the United States, which said appeal is hereby allowed, and the appeal bond of complain*t*ants is fixed at eight thousand dollars; and thereupon the defendants and William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, in open court, all parties being present, prayed an*d* appeal*ed* to the Supreme Court of the United States, which appeal is hereby allowed, and the appeal bond of said defendants last named is hereby fixed at eight thousand dollars.

A. P. McCORMICK,
U. S. Dist. Judge.

611 Endorsed: No. 52. Equity. Nicholas Hanrick *vs.* E. G. Hanrick *et al.* Decree. Filed Nov. 30th, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

612 In the Circuit Court of the U. S. for the Eastern District of Tex., at Waco.

NICHOLAS HANRICK *et als.*
vs.
E. G. HANRICK *et als.*
No. 52. In Equity.

Know all men by these presents that we, William Brady, Phillip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, as principals, and John T. Brady and —— —— and —— ——, as sureties, are held and firmly bound unto E. G. Hanrick, E. J. Gurley, Nicholas Hanrick, Ellen Hanrick, Anne Hanrick, Elizabeth Clare, joined by her husband, Thos. Clare; Catherine O'Neill, Peter Whalen, Robert Whalen, Mary Whalen, Eliza Whalen, and Bridget Whalen in the full and just sum of eight thousand ($8,000) dollars, to be paid to the said E. G. Hanrick, E. J. Gurley, Nicholas Hanrick, Ellen Hanrick, Anne Hanrick, Elizabeth Clare, joined by her husband, Thos. Clare; Catherine O'Neill, Peter Whalen, Robert Whalen, Mary Whalen, Eliza Whalen, and Bridget Whalen, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our heirs and each of our heirs, executors, and administrators, firmly by these presents.

Signed and executed by us and dated this second day of November, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-named William Brady, Phillip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, 613 deceased, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action on the 30th day of November, 1889, by the circuit court of the United States for the northern district of Texas, at Waco:

Now, therefore, the condition of this obligation is such that if the above-named William Brady, Phillip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, shall prosecute their said appeal to effect and shall answer all costs and damages if they shall fail to make good their appeal, then this obligation shall be null and void; otherwise to remain in full force and virtue.

WM. BRADY.
PHILIP O'BRIEN.
W. A. PATRICK, *Adm'r*,
By J. T. BRADY *Att'y*.
J. T. BRADY.
W. E. KENDALL.

Approved this 3rd December, 1889.

A. P. McCORMICK,
U. S. Dist. Judge.

[Endorsed:] In equity. No. 52. Nicholas Hanrick *et als.* *vs.* E. G. Hanrick *et als.* (30.) Appeal bond of defendants Wm. Brady, Phillip O'Brien, and W. A. Patrick, adm'r of the estate of Eliza M. O'Brien, deceased. Filed Dec. 3, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

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614 In the Circuit Court of the U. S. for the Eastern District of Tex., at Waco.

NICHOLAS HANRICK *et als.*
vs.
E. G. HANRICK *et als.*
In Equity. No. 52.

Know all men by these presents that we, Nicholas Hanrick, Ellen Hanrick, Anne Hanrick, Elizabeth Clare, joined by her husband, Thos. Clare; Catherine O'Neill, Peter Whalen, Robert Whalen, Mary Whalen, Eliza Whalen, and Bridget Whalen, as principals, and —— —— and —— —— and —— ——, as sureties, are held and firmly bound unto E. G. Hanrick, E. J. Gurley, William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, in the full and just sum of eight thousand ($8,000) dollars, to be paid to the said E. G. Hanrick, E. J. Gurley, William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our heirs and each of our heirs, executors, *executors* and administrators, firmly by these presents.

Signed and executed by us and dated this second day of November, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-named Nicholas Hanrick, Ellen Hanrick, Anne Hanrick, Elizabeth Clare, joined by her husband, Thos. Clare; Catherine O'Neill, Peter Whalen, Robert Whalen, Mary Whalen, Eliza Whalen, and Bridget Whalen have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action on the 30th day of November, 1889,
by the district court of the United States for the northern
615 district of Texas, at Waco;

Now, therefore, the condition of this obligation is such that if the above-named Nicholas Hanrick, Ellen Hanrick, Anne Hanrick, Elizabeth Clare, joined by her husband, Thos. Clare; Catherine O'Neill, Peter Whalen, Robert Whalen, Mary Whalen, Eliza Whalen, and Bridget Whalen shall prosecute their said appeal to effect and answer all costs and damages if they shall fail to make good their appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

NICHOLAS HANRICK.
ANNIE HANRICK.
ELLEN HANRICK.
ELIZABETH CLARE.
THOMAS CLARE.
CATHARINE O'NIEL.
PETER WHELAN.
ROBERT WHELAN.
ELIZA WHELAN.
ANNIE WHELAN,
By H. F. RING, *Att'y.*
J. T. BRADY.
W. E. KENDALL.

Approved 3rd December, 1889.

A. P. McCORMICK,
U. S. Dist. Judge.

[Endorsed:] In equity. No. 52. Nicholas Hanrick *et als. vs.* E. G. Hanrick *et als.* Appeal bond of complainants. Filed Dec. 3, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

616 In the Circuit Court of the U. S. for the Eastern District of Texas, at Waco.

Nicholas Hanrick *et als.*
vs. } In Equity. No. 52.
E. G. Hanrick *et als.*

Before me, G. H. Pendarvis, a notary public in and for Harris county, Texas, on this day personally appeared W. E. Kendall and

John T. Brady, of Harris county, Texas, each of whom, being duly sworn, deposes and says that he is possessed of property within the State of Texas subject to execution to the value of more than sixteen thousand dollars.

W. E. KENDALL.
J. T. BRADY.

Subscribed and sworn to before me this 2nd day of December, A. D. 1889.

[Seal Notary Public, County of Harris, Texas.]

G. H. PENDARVIS,
Notary Public, Harris County, Texas.

617 [Endorsed:] No. 52. Eq. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Appeal bond of complainant. Filed Dec. 3rd, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

618 Know all men by these presents that we, E. G. Hanrick, L. W. Goodrich, and B. B. Clarkson, are held and firmly bound unto Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whalen, Robert Whalen, Bridget Whalen, Eliza Whalen, Catherine O'Neill, William Brady, Philip O'Brien, W. A. Patrick, administrator of the estate of Eliza M. O'Brien, deceased, and E. J. Gurley, in the full and just sum of eight thousand ($8,000.00) dollars, to be paid to the said parties above named, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term of the U. S. circuit court for the 5th circuit and northern district of Texas, sitting at Waco, in a suit depending in said court between Nicholas Hanrick, Annie Hanrick, Ellen Hanrick, Elizabeth Clare, joined by her husband, Thomas Clare; Peter Whalen, Mary Whalen, Robert Whalen, Bridget Whalen, Eliza Whalen, Catherine O'Neall, complainants, against the said E. G. Hanrick, E. J. Gurley, William Brady, Philip O'Brien, and W. A. Patrick, as administrator of estate of Eliza M. O'Brien, dec'd, defendants, a decree was rendered against the said E. G. Hanrick, one of said defendants, and also against him as complainant in a cross-bill filed in said suit against all of the above-named payees, as defendants to said cross-bill, and the said E. G. Hanrick having taken an appeal to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and due notice of said appeal having been given in open court and entered of record citing and admonishing them, the said payees above named, to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said E. G. Hanrick shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

E. G. HANRICK. [SEAL.]
L. W. GOODRICH. [SEAL.]
B. B. CLARKSON. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
A. P. McCORMICK,
U. S. Dist. Judge.

619 [Endorsed:] No. 52. Eq. Nicholas Hanrick *et al. vs.* E. G. Hanrick *et al.* Appeal bond of def't E. G. Hanrick. 30. Filed Dec. 3rd, 1889. J. H. Finks, clerk, by C. A. Richardson, deputy.

620 HANRICK *et al.*
vs.
HANRICK *et al.*

On this 3rd day of December, 1889, came E. G. Hanrick into open court and presented his appeal bond in a sum fixed in a former order in this cause; which said bond is hereby approved and filed as part of the record.

Came also the complainants, Nicholas Hanrick *et al.*, and presented their appeal bond, which is hereby approved and filed.

Came also the defendants William Brady, Philip O'Brien, and W. A. Patrick and present their appeal bond; which said bond is hereby approved and filed.

A. P. McCORMICK,
U. S. Dist. Judge.

Filed Dec. 3, 1889.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

621 UNITED STATES OF AMERICA,
Northern District of Texas, } *ss:*

I, J. H. Finks, clerk of the circuit court of the United States, fifth circuit and northern district of Texas, do hereby certify that the foregoing and attached 617 pages of written matter, numbered in the margin thereof from 1 to 617, inclusive, contains a true and correct transcript and copy of the record and proceedings had, as appears on file and of record in my office, in cause No. 52, equity, entitled Nicholas Hanrick *et al.* against E. G. Hanrick *et al.*

In witness whereof I hereunto set my hand and affix the seal of said circuit court of the United States, at my office, in Waco, Texas, this the 27th day of August, in the year of our Lord one thousand eight hundred and ninety.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Waco.]

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

Endorsed on cover: Case No. 14,396. N. Texas C. C. U. S. No. 337. E. G. Hanrick, appellant, *vs.* Nicholas Hanrick, Annie Hanrick, *et al.* Case No. 14,397. No. 338. Nicholas Hanrick, Annie Hanrick, *et al.*, appellants, *vs.* E. G. Hanrick, E. J. Gurley, William Brady, *et al.* Case No. 14,398. No. 339. William Brady, Philip O'Brien, *et al.*, appellants, *vs.* E. G. Hanrick, E. J. Gurley, *et al.* Filed October 31, 1890.

Office Supreme Court U. S.
FILED.
MAR 27 1894
JAMES H. McKENNEY,
CLERK.

153-192

IN THE

Supreme Court of the United States.

No. 337.

E. G. HANRICK

vs.

NICHOLAS HANRICK, ANNIE HANRICK, ET AL.

Brief of W. Hallett Phillips for Appellant on the Question of Removal.

W. HALLETT PHILLIPS,
For Appellant.

In witness wher
said circuit court c

IN THE

Supreme Court of the United States.

No. 337.

E. G. HANRICK

vs.

NICHOLAS HANRICK, ANNIE HANRICK, ET AL.

Brief of W. Hallett Phillips for Appellant on the Question of Removal.

This suit was begun in the Falls County district court, Texas, at the March term, 1879, in the form of an action of trespass to try title. (R., 4.)

The plaintiffs were Nicholas Hanrick and others, claiming to be heirs of Edward Hanrick, deceased, and defendant was E. G. Hanrick, also an heir.

After seven "amended original petitions" the suit finally assumed somewhat the form of a cause of partition and a proceeding to remove cloud on the title. It sought to have the real estate belonging to Edward Hanrick, deceased, divided between the parties entitled and to have certain deeds set aside.

By the last amended petition William Brady, who asserted an interest through certain of the heirs, was made a party defendant, as also E. J. Gurley, who claimed he was entitled to one-third of the land in question by virtue of a contract with Edward Hanrick and subsequent deeds by his administrator and heir, E. G. Hanrick.

Cameron, Branch, and Sargent were likewise made defendants, as they asserted interests in the property.

The petition alleged that several of the plaintiffs resided in the State of New York; others residents of Ireland and aliens; the defendant Sargent a resident of Massachusetts. E. G. Hanrick, Branch, Gurley, and other defendants, residents of Texas; Brady and Cameron, residents of New York.

Brady, with Philip and Eliza O'Brien, defendants, filed in March, 1883, a disclaimer of any interest in the lands by virtue of certain conveyances to them, described in the complaint. (R., 19.)

Gurley answered, setting up his claim to one-third of the land. (R., 41.)

In this condition of the pleadings, Brady filed his petition in the Falls County district court for a removal of the cause into the circuit court on the ground of local prejudice. His petition was filed in *the State court* at the July term, 1887, and he also filed *there* his own *affidavit* in support of his petition and a bond. (R., 57.)

Whereupon, on July 5, 1887, the cause was ordered to be removed by the State court into the circuit court for the northern district of Texas. (R., 65.)

The petition for removal, after undertaking to set forth the pleadings and the citizenship of the parties, alleges:

> "Petitioner says that in this said cause there is a controversy between a citizen of the State of Texas, in which such suit was brought, and a citizen of another State, who is a defendant in said suit, to wit, a controversy between E. J. Gurley, E. G. Hanrick, and Wharton Branch, all citizens of Texas, and your petitioner, William Brady, a citizen of New York, and a defendant in said suit."

The petition then states the grounds of the application for removal on account of local prejudice, and why justice could not be attained by a resort to the remedies afforded by State law providing for change of venue. (R., 59.)

The application for removal on account of local prejudice is made by one of a number of defendants in a partition suit, alleging that his citizenship is different from that of certain other of his codefendants. The plaintiffs are aliens, or residents of New York and, we may presume, citizens thereof, so that their citizenship and that of the petitioning defendant is the same. Furthermore, several of the defendants who were not joined in the application for removal have the same citizenship as the petitioning defendant, while other of the defendants are citizens of Texas, where the suit was brought, or aliens.

In the circuit court a motion to remand the cause was made (R., 66) and overruled November 23, 1887. The court considered the statements in the petition and affidavit of Brady to show local prejudice sufficient for the purpose of removal. (R., 73.)

The cause proceeded to a final decree of partition, to reverse which E. G. Hanrick prosecuted an appeal (R., 327), No. 337.

Nicholas Hanrick and others, who were complainants below, also prosecuted an appeal, No. 338.

William Brady and others likewise took an appeal, No. 339.

The question of removal, it seems to us, has been definitely decided by this Court in such a manner as to call for a reversal of the decree with an order to remand the cause to the State court.

Some of the plaintiffs and some of the defendants, including Brady, were citizens of the same State. Some of them were aliens. No removal could be effected on the ground of local prejudice at the instance of defendant Brady, because his interest was adverse to some of his codefendants, whom he named in his petition as citizens of the State where suit was brought.

The removal is supposed to have been authorized by section 639 of the Revised Statutes, the act of March 3, 1875, and the act of March 3, 1887. As the act of 1875 makes no mention of local prejudice (the sole ground of removal), it need not be considered.

Subdivision 3d of section 639 Rev. Stat. provides:

> "Where a suit is between a citizen of the State where it is brought and a citizen of another State, it may be removed on the petition of the latter, whether he be plaintiff or defendant * * * if he files an affidavit stating that he has reason to believe and does believe that from prejudice or local influence he will not be able to obtain justice in such State."

This clause re-enacts the language of the act of March 2, 1867, 14 Stat., 558.

The only change to be noted is in the omission of the word "controversy"—the act of 1867 providing for a removal in any suit "in which there is a *controversy* between a citizen of the State in which the suit is brought and a citizen of another State."

Section 2 of the act of March 3, 1887, as amended by the act of March 3, 1888 (25th Stat., 433), provides:

> "And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the circuit court of the United States for the proper district; and where a suit is now pending or may be hereafter brought in any State court, in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant being such citizen of another State, may remove such suit into the circuit court of the United States for the proper district at

any time before the trial thereof, when it shall be made to appear to said circuit court that from prejudice or local influence he will not be able to obtain justice in said State court, or in any other State court to which the said defendant may under the laws of the State have the right on account of such prejudice or local influence to remove said cause: *Provided*, That if it further appear that said suit can be fully and justly determined as to the other defendants in the State court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said circuit court may direct the suit to be remanded, so far as relates to such other defendants, to the State court, to be proceeded with therein."

The act of 1887 makes several changes in the previous law.

The differences are thus stated:

"Under the previous acts the right of removal might be exercised by plaintiff as well as defendant; the application was addressed to the *State court;* there was no provision for a separation of the suit; the ground of removal was based upon what affiant asserted he had reason to believe and did believe. * * * While under the latter act the right is confined to the defendant; *the application is made to the circuit court;* the suit may be divided and remanded in part; the prejudice or local influence must be made to appear to *the circuit court*—that is, the circuit court must be legally satisfied by proofs suitable to the nature of the case of the truth of the allegation that by reason of those causes the defendant will not be able to obtain justice in the State court." * * * (Fisk *vs.* Henairie, 142 U. S., 469.)

To this might be added, the act of 1887 revived the word "controversy," which was used in the act of 1867, but omitted in the third subdivision of section 639 Revised Statutes.

When Congress, in this connection, used the word "controversy" it meant to attach to it the same meaning it possessed when used in other portions of the same act and in previous acts.

The act of 1887 limited the right of removal conferred by previous legislation.

> "The attempt was manifestly to restrain the volume of litigation pouring into the Federal courts and to return to the standard of the judiciary act, and to affect this in part by resorting to the language used in the act of 1875, as its meaning had been determined by judicial interpretation. This is the more obvious in view of the fact that the act of March 3, 1887, was evidently intended to restrict the jurisdiction of the circuit court, as we have heretofore held."
>
> Fisk *vs.* Henairie, *supra.*
>
> Tennessee *vs.* Bank of Commerce (unreported).

The removal cannot be effected under any of the acts on account of local prejudice, because one of many defendants to a suit seeking to establish such a right as that of partition alleges diverse citizenship from that possessed by some of his codefendants, who are asserting their right to share in the property involved.

If the citizenship of the petitioner is the same as that of the non-resident complainants this fact is fatal.

It is the whole suit which the acts allow to be removed on the ground of local prejudice, and it was never supposed that the mere fact that certain defendants might as between themselves have conflicting interests and diverse citizenship would permit the citizenship of the plaintiff to be disregarded.

Such adverse interests might be in minor particulars and not at all affect the main object of the suit.

Indeed in the present instance the removal was effected by a party whose interest in the property was small as compared with the other litigants.

And the dispute which Brady had (if such dispute there was) with the codefendants he names was a matter of small consequence compared with the general object of the suit.

In point of fact the defendants he mentions were seeking to establish as against the property their claims to certain interests, and they did not have, with the exception of Sargent, any particular controversy with Brady.

If a defendant was a mere nominal party and all his co-defendants wished to remove as against all the plaintiffs on account of diverse citizenship, the fact that the citizenship of the nominal defendant was the same as that of the plaintiffs might not be allowed to affect the result, but such was not the case presented by the record.

The object of the suit was one and indivisible, although the different defendants had diverse interests in the land sought to be partitioned. When the present suit was filed all the shares of the parties were undivided, and so when the removal was effected.

The legislation on the subject has been construed in a series of decisions by this Court settling its construction.

In the Sewing Machine Company case it was decided that an action upon a contract by a plaintiff, a citizen of the State where the suit was brought, against two defendants who were citizens of other States, and a third who was a citizen of the same State as the plaintiff, was not removable by the non-resident defendants. (18 Wall., 43.)

This was followed by Vannevar *vs.* Bryant, where it was said that under the act of 1867 a removal could not be had in a suit against several defendants in which the plaintiffs and some of the defendants were citizens of the same State and the other defendants citizens of other States, the petitioning creditor being a non-resident defendant. (21 Wall., 43.)

These cases differed but slightly from the one now before the Court. In them the applicants for removal were citizens of the same State as some of the plaintiffs, and the suit was by citizens of the State in which brought.

Both of the decisions were under the act of 1867. Importance was sought to be attached in argument to the use of the word "controversy" as purporting that it was only necessary that the parties to the "*controversy*" in the suit should have the requisite citizenship. This argument was overruled, the court holding that the word "controversy" in this connection was the same as "suit." This was also decided in Blake *vs.* McKim, 103 U. S., 339.

The result of these decisions was that either the non-resident plaintiffs or non-resident defendants under the act of 1867 could remove the cause, provided all the plaintiffs or all the defendants joined in the petition and were non-residents; but it was declared that where one or more of the plaintiffs or one or more of the petitioning defendants were citizens of the State in which the suit was pending no removal could be had.

In Barney *vs.* Latham it was observed that the Sewing Machine Company's case held the act of 1867 did not give to parties citizens of States other than that where brought a removal when their codefendant or coplaintiffs were citizens of the same State with some of the adverse parties.

> "The court had in mind the case where the presence in the suit of all the parties on the side seeking the removal was essential in order that complete justice should be done, and not a suit in which there was a separable controversy, removable under the act of 1866."

And, further, it was declared that the act of 1867 had been construed as only allowing a removal where there was a *common citizenship* upon each side of the controversy raised by the *suit*.

> "That is, all on the one side being citizens of the State in which the *suit* is brought, while all the other side are citizens of other States." (103 U. S., 210.)

The rule was stated in the same way in American Bible Co. *vs.* Price. (110 U. S., 62.)

In Meyers *vs.* Swann there was a still nearer approach to the fact of the case under consideration. "It is not enough," say the Court, "that there is a separable controversy between parties having the necessary citizenship, nor that the principal controversy is between citizens of different States. If there are necessary parties on one side of the suit, citizens of the same State with those on the other side, the circuit court cannot take jurisdiction."

Meyers *vs.* Swann, 107 U. S., 548.
Cambria Iron Works *vs.* Ashburne, 118 U. S., 57.

By the expression "necessary parties" the Court meant parties not merely formal.

The question we are presenting we think concluded by the case of Young *vs.* Parker.

A judgment creditor's bill was filed by Parker in a West Virginia State court against Clarkson and many others who were alleged to be creditors of Parker. Several of these defendants, citizens of different States from that in which suit was brought, filed in the State court their application for a removal of the cause on the ground of local prejudice. They alleged they were citizens of Virginia and Pennsylvania; that certain of their codefendants were citizens of *West Virginia*, and that in said suit "there is a controversy between your petitioners in different rights and the aforesaid parties, citizens and inhabitants of the State of West Virginia, in which said suit is pending." A removal was granted and the cause proceeded to a final decree in the circuit court, determining the amounts due to the creditors and directing a sale of certain real estate.

The Court, referring to many of the authorities we have quoted, disposed of the case thus:

"There was no separate controversy here, but if there were the provision as to the removal of such a controversy has no application to a removal on the ground of local prejudice under the act of March 2, 1867, chap. 196, 14 Stat., 558, upon which these petitions were based.

"The provisions of that act are reproduced in the third subdivision of section 639 of the Revised Statutes, and it was and is essential, in order to such removal, where there are several plaintiffs or several defendants, that all the necessary parties on one side must be citizens of the State where the suit is brought and all on the other side must be citizens of another State or States, and the proper citizenship must exist when the action is commenced as well as when the petition for removal is filed." (132 U. S., 207.)

These decisions we have discussed only enforce what has always been understood to be the meaning of "a suit between a citizen of the State where the suit is brought and a citizen of another State." The rule was announced by Chief Justice Marshall in Strawbridge *vs.* Curtiss (3 Cr., 267), and has since frequently been repeated.

Peninsular Ins. Co. *vs.* Stone, 121 U. S., 631.
Smith *vs.* Lyons, 133 U. S., 319.

There are other objections which should have induced the circuit court to decline jurisdiction.

Under the act of 1887 the application to remove the cause for local prejudice should have been made to the circuit court, and the evidence required by the statute should have been filed there.

In these respects, as we have seen, the act differed from that of 1867. These requirements were, it would seem, jurisdictional and they were not complied with, as the proceedings were had in the State court. "The prejudice or local influence must be made to appear to the circuit court—that is to say, the circuit court must be legally satisfied by proofs suitable to the nature of the case of the truth of the allegation that by reason of those causes the defendant will not be able to attain justice in the State courts."

Fisk *vs.* Henairie, *supra.*
Short *vs.* Chicago R. R., 33 Fed. Rep., 114.
Malone *vs.* R. R., 35 Fed. Rep., 635.

To prove the statements of his petition Brady only filed in the State court his own affidavit. This is not such proof as is required by the act of 1887, although it would have been, perhaps, sufficient under the act of 1867.

While ordinarily the circuit court exercises a discretion in passing on the evidence, which this Court will not review, a different rule applies when this important feature of the statute is not legally enforced by the court below and the proper exception is saved (R., 67). *In re* Penn. Co., 137 U. S. 457.

We ask the Court to consider the petition of Brady as respects the allegations of his inability to obtain justice in the State courts.

As a matter of fact, in this very cause Brady and the parties under whom he claims rely on three decisions of the supreme court of Texas, finally determining many of the issues as regard title in their favor, and holding that aliens were entitled to inherit land in Texas.

Hanrick *vs.* Hanrick, 54 Tex., 101.
Hanrick *vs.* Hanrick, 61 Tex., 596.
Hanrick *vs.* Hanrick, 63 Tex., 618.

These decisions reversing the judgments of the court below were rendered before the petition for removal was filed. The court should have refused to remove, as the application was not " before the trial." (R., 140.)

Fisk *vs.* Henairie, *supra.*

It is true that the circuit court, in passing upon the motion to remand after the cause had been removed many months before by the State court, says " it had been made to appear to the court " that from prejudice Brady would not be able to obtain justice in the State court. But this general statement is not sufficient to supply the lack of requisite evidence.

There is no pretense any other proof was adduced by Brady than the affidavit filed in the State court.

The decisions of this Court we have cited were, it is true, under the act of 1867 and section 639, Revised Statutes; but we submit the same principle should apply to the construction of the language used in the act of 1887. That act was largely a re-enactment of previous legislation, except in so far as it has been declared by this Court to restrict the jurisdiction of the Federal courts.

In view of such an interpretation can it be held that Congress contracted the jurisdiction in all other portions of the act, but intended to enlarge it in that most important provision which permits a removal by "*any citizen* of such State" on account of local prejudice?

The class embraced in the previous act of 1867 is the same as in the act of 1887, and the same definition should be applied to both acts. The settled construction of the expression "a suit between a citizen of a State in which the suit is brought and a citizen of another State" equally applies to both acts, and the mere fact that Congress in the same clause of the act of 1887 which defines the class says "*any defendant being such citizen* of another State may remove," does not authorize the construction that Congress intended in the act of 1887, to depart from the long-settled construction of legislation applying to a similar class. This view would seem to be conclusive in the light of the interpretation which this Court has consistently put upon the act of 1887.

When that act was enacted it was supposed by many to enlarge the jurisdiction of the Federal court, and the opinion was even expressed that under the local-prejudice clause any suit could be removed where the necessary citizenship existed irrespective of the amount involved.

It was also considered by some of the circuit judges that the act enlarged the right of removal and conferred it upon any defendant irrespective of the citizenship of his codefendants, provided he had the requisite citizenship. This was the view taken by Judge Jackson in the case of Whelan *vs.* R. R., 35 Fed. Rep., 863, and his opinion has since been acquiesced in by Judge Taft, but without discussion, in the case of Detroit against Detroit Railway, 54 Fed. Rep., 2.

On the other hand, Judge Shiras, of the district court, differed from those judges (Anderson *vs.* Burns, 43 Fed. Rep., 32), and this Court in analyzing the differences between the acts of 1867 and 1887 fails to mention any such change in the previous law. (Fisk *vs.* Henairie, *supra.*)

If this Court should agree that a removal may be effected under the act of 1887 by one defendant citizen of another State when he and some of his codefendants are citizens of the same State as some of the plaintiffs, then the question would have to be decided by this Court whether such legislation falls within the judicial power conferred by the Constitution, the suit being one partially between citizens of the same State.

It was decided in Blake *vs.* McKim (103 U. S., 336) that the power was not given by the act of 1875.

But if the enlarged construction should obtain or not, it would have no application to a case such as the one now presented. In the first place, some of the plaintiffs are aliens, and it would seem that the local-prejudice act does not apply to a suit brought by them. It was never contended, moreover, that the enlarged construction could be extended so as to permit a removal where the plaintiff and some of the removing defendants were citizens of the same State. In the present instance none of the plaintiffs are citizens of the State where the suit was brought.

In Wilder *vs.* Virginia Co. Chief Justice Fuller held that when the citizenship on the plaintiff's side of the suit is such as to prevent a removal under the act of 1867 it is equally effective to defeat the right under the act of 1887, and as the complainants were only in part citizens of the State where the suit was brought, it was held not removable by a defendant citizen of another State.

It was not thought necessary to discuss the question whether the suit could be removed under the act of 1887 by one of the defendants if he were a citizen of a different State from plaintiff's and some of his codefendants were citizens of the State where suit was brought (46 Fed. Rep., 681). A similar decision was made by Justice Jackson in Adelbert College *vs.* R. R. (47 Fed. Rep., 845).

The case now presented is where none of the plaintiffs are citizens of the State where suit is brought, but some of them are citizens of the same State with the removing defendant. This is sufficient to defeat the right.

If at this time it is permissible to seek support for the removal on any other ground than that on which the removal was effected, it can be shown without difficulty that the removal was not justified by any existing law.

We have seen that the provision as to separable controversy has no application to a question of removal on account of local prejudice.

It can hardly be seriously argued that the citizenship of the parties or the nature of the case is such as to allow a removal on account of a *separable controversy.*

The object of the suit was partition of land. Necessarily in such a suit the claims of parties, unless the suit is an amicable one, more or less conflict; but that is not of itself sufficient to allow a removal by one defendant as against other defendants on the ground that his controversy is a separable one.

The petition did not present several causes of action, some of which were against the resident and others against the non-resident defendants, but embraced a single cause of action and a single ground of relief. It did not come within the authorities which allow a removal on the ground of a *separable controversy,* such as entitle the non-resident defendants to remove the cause. The question whether there is a separable controversy must be determined by the state of the pleadings and the record of the case at the time of the application for removal, and not by the allegations o the petition therefor or the subsequent proceedings which may be had in the circuit court.

Barney *vs.* Latham, 103 U. S., 205.
Torrence *vs.* Shedd, 144 U. S., 527.
Wilson *vs.* Oswego Township, 151 U. S., 66.

There is no pretense that the "controversy" could be settled between the parties mentioned in the petition for removal as possessing the requisite citizenship without the presence of other parties to the suit whose citizenship was such that they do not join in the petition.

The suit was common to all, and testing the right of removal by the pleadings at the time the application was filed the petitioner was properly and necessarily a party.

Merchants' Cotton Press *vs.* Insurance Co., 151 U. S., 384.

The fact that various defendants, as between themselves, claim distinct interests in the land, even if adverse interests, did not make the controversy any the less single and indivisible.

The controversy could not be made divisible "so that the right of either defendant could be fully determined by itself apart from the right of the other defendants and from the main issue between both defendants on the one side and the plaintiff on the other."

Bellaire *vs.* B. & O. Railroad, 146 U. S., 119.

If the removal had been placed on the ground of diverse citizenship it could not be sustained. The parties to the suit cannot be arranged so that all on one side of the controversy shall be citizens of different States from those of the parties on the other side. If we could succeed so to arrange them there would be the fatal objection that Brady alone applied for removal. This class of cases embraces controversies not separable where the whole suit is removed.

Wilson *vs.* Oswego Township, *supra.*

For these reasons we submit the decree should be reversed with directions to remand the cause.

W. HALLETT PHILLIPS,
For Appellant.

Office Supreme Court U. S.
FILED.
MAR 27 1894
JAMES H. McKENNEY,
CLERK.

153-192

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 337.

E. G. HANRICK, APPELLANT,

vs.

NICHOLAS HANRICK ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT, FIFTH CIRCUIT, NORTHERN DISTRICT OF TEXAS, SITTING AT WACO.

Brief of L. W. Goodrich for Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1893.

No. 337.

E. G. HANRICK, APPELLANT,

vs.

NICHOLAS HANRICK ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT, FIFTH CIRCUIT, NORTHERN DISTRICT OF TEXAS, SITTING AT WACO.

The history of the case is as follows:

At an early day Edward Hanrick, now deceased, with his brother, Philip Hanrick, emigrated from Ireland to the United States. In 1833 Edward Hanrick became largely interested in Texas lands. Among other lands he acquired the lands in controversy in this suit, to wit:

Eleven leagues of land, granted by the Mexican government to Antonacio de la Serda, situated in Falls county; also five leagues of land, in the same county, granted to Pedro Zarza; also eleven leagues of land granted to Rafael de Aguirrie, one league of which is situated in Falls county and ten leagues situated in Williamson county; also two leagues of land situated in Liberty county, Texas.

Later all these lands became involved in litigation with parties claiming under adverse titles, suits having been filed in 1858. In 1865 Edward Hanrick departed this life intestate, unmarried, and without issue. He left surviving him the appellant, E. G. Hanrick, a son of his deceased brother, Philip, who is a native of Alabama; also his alien next of kin, to wit, his sister, Elizabeth O'Brien; a brother, John Hanrick, and a brother, James Hanrick, all of whom lived in Ireland and were natural-born subjects of the Queen of the United Kingdom. E. G. Hanrick, the nephew, being a citizen of the United States, acting upon the advice of counsel, the Hon. William G. Hale, now deceased, took out letters of administration in Falls county, Texas, on the estate of his uncle, and took charge of the entire estate as such administrator and as sole heir. The suits brought by Edward Hanrick in his lifetime were revived by him as administrator and as sole heir. The entire property of the estate, as above stated, was in litigation and producing no revenue. The title to the Pedro Zarza tract was substantially settled in 1868 (see Hanrick *vs.* Neely, 10 Wallace Records, p. 364). The title to the Antonacio de la Serda eleven leagues was more seriously contested, and was finally settled by compromise of the parties in 1877, the suit relating to this title having been twice before this honorable court by writ of error to the circuit court sitting at Austin (see Hanrick *vs.* Barton, 16 Wallace Reports, p. 166). After settlement of the title between parties holding adverse to the Hanrick title, part of the alien next of kin, above mentioned, viz., the children of James Hanrick, brought suit in the State court, in Falls county, in the ordinary form of an action of trespass to try title, alleging specially their claim as heirs of Edward Hanrick, deceased. This suit was brought in December, 1878, by Nicholas Hanrick and his brothers and sisters, who were the children of James Hanrick, brother of Edward Hanrick.

They alleged the death of their father in 1875, also the death of their uncle, John Hanrick, in 1871, intestate, unmarried, and without issue. In order to avoid the plea of alienage they set up the fact that the English Parliament had, in May, 1870, passed an act denominated the naturalization act of 1870. This act in terms relieved all aliens of any disability to inherit lands in the United Kingdom, and plaintiffs claimed that by the reciprocity act of Texas, passed in 1854, the defeasible title which they inherited at the time of Edward Hanrick's death had become perfect and indefeasible (Record, pp. 1–4). A demurrer was filed to their petition by E. G. Hanrick, who was at that time sole defendant (Record, p. 4), and upon the hearing of the said demurrer it was held by the district court of Falls county that the aliens had no right to inherit under the laws of Texas (Record, p. 6). From this judgment the plaintiffs appealed to the supreme court of Texas and the judgment was by the supreme court reversed. The case is reported in the 54th Texas Reports, page 101. After the reversal of that judgment, to wit, March 8, 1882, the plaintiffs amended their pleadings, making E. J. Gurley, a citizen of Texas; William Brady, Philip O'Brien, and his wife, Eliza M. O'Brien, citizens of New York, parties defendant, and also joined as defendants Wharton Branch, of Texas, and John B. Sargent, of Boston, Mass., and others. In short, the suit that was begun as an action at law to try title became by amendment and by the addition of new parties defendant and new issues a suit in equity to cancel deeds, for an account, and for a partition.

Compare original petition in Record, p. 1, with the bill filed by plaintiffs in the circuit court under the order of the court to recast their pleadings. (Record, pp. 74–95, and Exhibits, pp. 95–117.)

The case was again tried upon demurrer and again determined against the right of aliens. This case was also appealed to the supreme court of Texas and again reversed.

Reported in 61 Texas Reports, 596. After the passage of the act of March, 1887, regulating removal of cases from the State court to the circuit courts of the United States, William Brady, one of the defendants, filed his application in the State court to remove the case to the United States circuit court on the ground of local prejudice. His application was supported by his own affidavit, and upon tender of bond by him the State court made an order removing the case to the United States court at Waco and the suit was filed on the equity docket of the said court.

At the next term of the circuit court E. G. Hanrick and E. J. Gurley, two of the defendants, joined in presenting a motion to remand the cause to the State court (Record, p. 66). To this motion were attached copies of deeds showing that said Wm. Brady, who filed the application for removal, had, before that time, acquired all the right of the plaintiffs, and that though nominally he had been named as a defendant, yet he was really plaintiff, and that the suit was prosecuted for his benefit. (Record, pp. 67–72.)

The motion to remand was denied by the court, and exception was taken and allowed (Record, p. 73). The court also directed the parties to recast their pleadings to conform to the rules governing equity cases.

The complainants in substance reiterated their amended petition filed in the State court in March, 1882, setting forth the pedigree of the family and how they claimed right to recover in this action, and it therefrom appeared that after the death of their uncle, John Hanrick, intestate, unmarried, and without issue the estate of the deceased, Edward Hanrick, passed to their father, James Hanrick; their aunt, Elizabeth O'Brien, and E. G. Hanrick (appellant) in equal parts (and this notwithstanding that all were aliens except said E. G. Hanrick); that their father, James Hanrick, died in 1875 intestate; that his children, the plaintiffs, took his one-third share by inheritance; that afterwards, in 1877, Nicholas, Annie, and Ellen Hanrick by separate deeds conveyed all their interest to Eliza M. O'Brien, which deeds on their face apparently conveyed absolute title, but were in fact made in trust to enable said Eliza M. O'Brien, who had a like deed made by her husband's mother, Elizabeth O'Brien, to sue for and recover the interest which they claimed; that Eliza M. O'Brien, joined by her husband, had conveyed by deed an undivided one-half of all interest held by her to William Brady, of New York; that petitioners had elected to rescind said conveyances for the reason that said Eliza M. O'Brien had failed to execute said trust, and said Eliza M. O'Brien and her husband, Philip O'Brien, and said William Brady were made parties and prayer made that said deeds of Nicholas, Annie, and Ellen Hanrick be canceled.

The complainants further allege that E. J. Gurley, one of the defendants, who is now in possession of part of said land and asserting that he was the owner of one-third interest in the land described and notoriously claims the same, and that these assertions, coupled also with the fact that said Gurley has joined said Edward G. Hanrick in the execution of deeds, casts a cloud upon the title of complainants in and to said land, greatly to their prejudice and injury. They deny that he has any such right.

Plaintiffs also alleged that in 1877 Philip O'Brien (son of Elizabeth O'Brien, of Ireland, and husband of Eliza M. O'Brien) did, by virtue of a power of attorney made by John Hanrick, James Hanrick, and Elizabeth O'Brien, dated in ——, 1870, convey by deed to Wharton Branch, of Galveston, and to John B. Sargent, of Boston, each an interest in the estate of Edward Hanrick, deceased.

Substantially the same allegations were made with respect to Nell B. Carpenter, and said persons were made parties defendant and prayed that deeds be canceled.

The plaintiffs prayed to recover their undivided one-third part of the lands described in their petition and for partition, and further alleged that the defendant E. G. Hanrick had conveyed large portions of the lands by deeds purporting to convey the entire interest, and that his vendees had entered upon said lands and had appropriated the same; and plaintiffs prayed that in making partition these lands be set off to this defendant as a part of his share in said estate.

The defendant, E. G. Hanrick, appellant in this cause, filed his answer in accordance with the rule of the court, in which he admitted the relationship of the parties, as alleged by the plaintiffs, the death of the intestate, Edward Hanrick, deceased; also that the said deceased had a regular chain of paper title from the sovereignty of the soil down to himself to all the lands mentioned in plaintiffs' petition, but he asserted that his estate in and to all of said lands was incumbered by various adverse titles and possessions of many other persons, and the value of his said claim of title depended upon the successful issue of litigation inaugurated by him and pending and unsettled at his death, and was further encumbered by his aforesaid obligation to his said attorneys for their fees, and the residue only constituted his estate in fee-simple which descended to his heirs. The defendant also submitted to the rule established by the court that aliens may take by descent in the State of Texas, and may also cast descent upon their alien heirs, and that the plaintiffs herein and Elizabeth O'Brien and this defendant were entitled each to a third part of the estate of said Edward G. Hanrick, deceased, prior to the making of the deeds set out in the plaintiffs' petition. (See Record, pp. 118 to 122.)

Continuing on page 125 of the Record the defendant admits that it is true that William Brady was by virtue of the writ of possession issued out of the circuit court at Waco, Texas, on the — day of ——, 1887, let into joint possession with this defendant of all of the unoccupied part of the lands belonging to said estate situated in Falls county, and the defendant also admits that said Brady has let the plaintiffs into joint possession with him, and the defendant also admits that there are certain distinct and separate parts and parcels of said lands which this defendant had, previous to the institution of this suit, sold to third persons, the possession of which tracts or parcels of land was not delivered to said Brady or to plaintiffs, but remained in the exclusive possession of third persons not parties to this suit, in accordance with their respective claims, and were so held at and before the bringing of this suit; and defendant avers that in good faith, and believing himself to be the sole and only heir of said deceased Edward Hanrick, he did by his deeds convey to said third parties in severalty said certain and distinct parts and parcels of said land; that many of said deeds were made by him in settlement by way of compromise of adverse titles and possessions, and purport only to release this defendant's right, and that many of said deeds conveyed lands therein described with covenants of general warranty, but defendant denies that by any of said deeds he intended to convey or could in law convey or did in fact convey any greater or different estate in said respective parcels of land than by law was vested in him, or that he became bound by his said covenants of warranty to any person except the covenantees named in said deeds. A list of said tracts conveyed is set out in the exhibit hereto attached and made a part hereof, and as to said tracts of land this defendant says that the several persons claiming and occupying the same have had and held the same respectively, peaceably, and adversely, cultivating and using and enjoying the same and paying all taxes thereon and claiming under deeds registered for five years or more, and that full and absolute title has become vested in said grantees, and that plaintiffs are barred and that said land cannot be partitioned by this court; and further, on page 126 of the Record, the defendant alleges as to the claim made in this suit by Nicholas Hanrick, one of the plaintiffs herein, to the undivided part of the said Pedro Zarza five leagues, and for partition thereof, the same ought not to prevail against this defendant, because he avers that heretofore, to wit, on the — day of March, 1880, in the district court of Falls county, Texas, in a suit of trespass to try title, then and there pending, wherein said Nicholas Hanrick was plaintiff and one J. V. Ubank was the original defendant in said suit, and this defendant as the vendor and warrantor of said Ubank was also made defendant, the right, title, and claim of the said Nicholas Hanrick to an undivided interest in the said five leagues of land situated on the west side of the Brazos river, in Falls county, Texas, and more fully described in Exhibit "A" attached to this answer, and the right and claim of said Nicholas Hanrick to take by inheritance a portion of said tract of land was asserted by his petition therein filed, which, upon demurrer thereto by the defendant and joinder therein by said Nicholas Hanrick, was adjudged by the court against the said Nicholas Hanrick and in favor of this defendant, and the said Nicholas Hanrick, electing to stand on his pleading and declining to amend the same, the said court did order, adjudge, and decree that said Nicholas Hanrick take nothing by his plea and that the defendant go hence without day; and the defendant avers that the full merits of said plaintiff's claim of title to said land was in issue in said suit before said court upon contest made by said defendant; that said court had jurisdiction of the aforesaid claim and contest and did hear and determine the same against said plaintiff and in favor of this defendant, which said judgment is final and conclusive. Wherefore this defendant pleads said judgment in bar of said claim by Nicholas Hanrick to any portion of said land.

And, further answering, on page 126 of the Record, this defendant also avers that, before the institution of this suit, the plaintiff, Nicholas Hanrick, did, to wit, on the 21st day of August, 1877, and the said plaintiff, Annie Hanrick, did, to wit, on the 3rd day of April, 1878, and the plaintiff, Ellen Hanrick, did, to wit, on the 3rd of April, 1878, by their voluntary deeds, severally executed by them, convey to Eliza M. O'Brien, wife of Philip O'Brien, all their several rights in and to all of the lands mentioned and described (being their interest in the entire estate of Edward Hanrick, deceased), and the said Eliza M. O'Brien, wife of Philip O'Brien, became thereby seized of the several interests theretofore held by the said Nicholas, Annie, and Ellen Hanrick at the dates mentioned, and, being so seized, together with an undivided interest conveyed to her by the said Elizabeth O'Brien, of Ireland, the said Eliza M. O'Brien did bargain and convey, by deed dated — day of November, 1878, to William Brady an undivided one-half of their interests acquired by virtue of the said deeds made to Eliza M. O'Brien by the said Annie and Ellen Hanrick and by said Elizabeth O'Brien, of Ireland, and the said William Brady became thereby seized jointly with the said Eliza M. O'Brien and her husband; and afterwards, to wit, on the — day of April, 1883, in an action of trespass to try title brought by the said Eliza M. O'Brien and her husband, Philip O'Brien, and the said William Brady as plaintiffs against this defendant as defendant therein in the circuit court of the United States for the northern district of Texas, at Waco, and in which suit the said Wharton Branch and John B. Sergeant were also parties as intervenors, the divers rights, claims, and titles of the said several parties to said suit in and to the lands sued for in this acttion were involved and presented by the pleadings and evidence therein before the court and jury, and in said suit this defendant did deny and contest any right, title, or interest in the said plaintiffs therein and in said intervenors, and did put all of said parties before a jury and require proof of their alleged rights, and the said jury did return a verdict that said plaintiffs were entitled to an undivided one-third of the land sued for, and thereupon the said court did adjudge that said plaintiffs, Eliza O'Brien and her husband, Philip O'Brien, should have and recover from this defendant and of said Branch and Sargent an undivided one-third part of the Antonacia de La Serda grant, of the Zarza grant and of the Aguirrie grant, being the same lands described in plaintiffs' petition in said suit; and this defendant avers that said circuit court had then and there full jurisdiction of said cause both as to the parties and of the subject-matter in dispute therein and full power to hear and determine all the facts and law necessary to a full and final adjudication of all the rights of the parties to said suit in and to the land in controversy therein, being the same as hereinbefore mentioned; and the defendant avers that said suit was begun by original petition filed on the — day of February, 1880, by Eliza M. O'Brien and her husband, Philip O'Brien, and William Brady, as plaintiffs, against this defendant; that the said Whorton Branch and John D. Sargent did, on the — day of ——, 1883, with leave of the court, file their several petitions of intervention, and that the aforesaid judgment was conclusive upon all the rights which the said plaintiffs therein asserted or could assert at the time of bringing said suit and at the time of their intervention; and this defendant also avers that in said suit the said Whorton Branch and the said John B. Sargent, by their pleadings and proof, put in issue against this defendant the same title and right by which they seek to recover against this defendant in this suit, which said right and title was by the aforesaid judgment denied and determined against them and in favor of this defendant.

Wherefore this defendant avers that neither the plaintiffs nor said Branch or Sargent or said Brady, or any person claiming under the said Eliza M. O'Brien, ought to recover from this defendant the said interest or any part thereof, and in support of this statement above this defendant will exhibit the record in this suit. (Record, p. 128.)

The defendant also pleads the statute of limitations against the claim of Nicholas, Annie, and Ellen Hanrick.

The answer of this defendant is lengthy, but it is not deemed important to state more of it at this place.

The defendant E. J. Gurley appeared and set up his right under the contract made with Edward Hanrick, in April, 1858, by which, for his services as counsel in the pending litigation, he was to receive an undivided one-third interest before partition among the heirs. (Record, p. 113.)

The defendants William Brady and O'Brien and wife had heretofore disclaimed the right to retain the interest conveyed to Mrs. O'Brien by virtue of the deeds of Nicholas, Annie, and Ellen Hanrick. (Record, p. 19.)

And now, in their answer (see Record, pp. 139 to 141), said defendants admit as true the facts alleged by plaintiffs upon which they sought to cancel said deeds, and set up the right which they claim under the deed of Elizabeth O'Brien, of Ireland, to Eliza M. O'Brien, and by her and her husband to William Brady. The defendants, Whorton Branch, John B. Sargent, and Nell B. Carpenter and others, stood on their former pleadings, and a judgment *pro confesso* was entered against them. The case came to trial before the circuit court at Waco, Texas, upon the pleadings above stated and upon the cross-bill of E. G. Hanrick and that of E. J. Gurley and that of William Brady and O'Brien and wife. The cross-bill of E. G. Hanrick will be found in the record, beginning on page 142, and sets out fully his claim. The cross-bill of E. G. Gurley will be found beginning on page 160 of the record.

Most of the facts were agreed to by stipulation of counsel and by admission in the pleadings.

The agreement will be found beginning at the bottom of page 191 and ending page 195. There was, in truth, no dispute as to the facts, but the difficulty arose upon the diverse views of the law arising from the facts. They may be briefly stated as follows:

(1.) That Nicholas, Annie, and Ellen Hanrick, having conveyed all their interest in said estate before the institution of this suit, were not part owners with the defendant of any portion of said lands, and could not, therefore, recover.

(2.) That the many persons in occupation of specific parts of the lands sued for, claiming the same in their own right, not being parties to this suit, no partition of such lands could be had in this suit.

That this defendant, having conveyed his interest in said specific parcels or having lost his right to the same by adverse occupation, was in no sense a part owner in said parcels, and whether or not the plaintiffs were such part owners could only be determined by a suit of trespass to try the title in which said persons could be made parties defendant.

(3.) The plaintiffs contended that, as to the lands conveyed by E. G. Hanrick to third parties, the same should be brought into partition and should be charged up to said E. G. Hanrick as a part of his share, notwithstanding said persons were not parties to the suit and notwithstanding the plaintiffs had not vindicated their title as against them by suit.

The court, upon hearing the case, found in favor of E. J. Gurley, establishing the contract made by him with Edward Henrick, deceased, and adjudged that he was entitled to recover an undivided one-third part of the lands pertaining to said estate. The court further found that the plaintiffs were entitled to two-ninths undivided interest; that the defendants William Brady and Philip O'Brien and wife were also entitled to an undivided two-ninths, and that this defendant was also entitled to an undivided two-ninths.

See page 295 of the Record.

The court also in its instructions to the special master as to how the land should be partitioned directed on page 297 as follows:

> "Sixth. It is further ordered that A. S. Lathrop, Esq., standing master of this court, be, and he is hereby, appointed to make partition of said land as herein adjudged and to pass upon and report the claims set up by the parties respectively for rents, damages, and contribution and for taxes and for cost paid, and he is instructed as follows, to wit:
>
> 1. To so divide and partition said lands that the portions of the same sold and conveyed by any part owner thereof to third persons should be included in the share allotted to said part owner if the share of such part owner be sufficient to contain all of the tracts conveyed by him, but the value of such improvements on said lands, if any, shall not be considered or estimated as part of the value of land.
> 2. As to the tracts of land occupied and improved by the defendants E. J. Gurley and E. G. Hanrick, the same shall be set apart to them if it can be done without prejudice to the other part owners, and the improvements on the said tracts of land shall not be estimated or considered as part of the value of the land."

His report is substantially in accordance with the directions contained in the interlocutory decree, and the main question arising upon the partition reported by him is based upon the sixth instruction above set out. This report begins on page 298 of the Record.

The complainants, as well as the defendants Brady, O'Brien and wife and this defendant, all filed exceptions to the report. Said exceptions, however, are all overruled by the court and a final decree entered in accordance with the report.

This defendant, E. G. Hanrick, appeals. The plaintiffs also gave notice of appeal, and William Brady and O'Brien and wife also gave notice of appeal, and the record was filed in this Court October 31, 1890. On demand made by the clerk this appellant, E. G. Hanrick, advanced his part of the estimated cost of printing, and upon demand made upon the parties in the cross-appeals for their share of printing of the record they failed to respond, and this appellant has therefore advanced all of the costs of the printing of the record, and therefore suggests to the Court that the appellants in said cross-appeals Nos. 338 and 339 ought not to be heard to prosecute said cross-appeals.

ERRORS ASSIGNED BY APPELLANT.

1. The circuit court erred in not remanding the case back to the said court upon the motion of E. G. Hanrick and in taking jurisdiction of said cause.

2. The court erred in holding that Nicholas, Annie, and Ellen Hanrick were entitled to recover, it appearing by the pleadings that before the institution of this suit they had severally conveyed all of their interests.

3. The court erred in not holding that Nicholas Hanrick was barred of his right of recovery by reason of the fact that in a suit brought by him against the tenant of this defendant, and in which this defendant became a party, said suit being in the district court of Falls county, judgment was entered against said Nicholas Hanrick, denying his right, which judgment is final and conclusive against said Nicholas Hanrick.

4. The court erred also in holding that Annie and Ellen Hanrick were not barred of their right of recovery by reason of the fact that their title was put in issue in the suit brought by O'Brien and wife and Brady in the circuit court at Waco against this defendant, and in which suit John B. Sargent and Whorton Branch were also parties, claiming by their pleadings and proof the said title of Nicholas, Annie, and Ellen Hanrick, as well as the title of Elizabeth O'Brien, and in which suit the plaintiff recovered the interest of

Elizabeth O'Brien only, which judgment is final and conclusive on the title of said Nicholas, Annie, and Ellen Hanrick.

5. The court erred in taking cognizance of this suit as a partition suit, it appearing by the pleadings and by the evidence that the title of the complainants was seriously disputed and no partition could be had until the title and right of possession should be adjudicated in a proper proceeding.

In this bill the right of E. J. Gurley to recover his third interest, and the partition, so far as it affects him, is not brought into question on this appeal, nor is the right of O'Brien and wife and Brady questioned so far as they are adjudged to recover two-ninths undivided interest, nor is the right of the complainants, except as to Nicholas Hanrick, Ellen Hanrick, and Annie Hanrick, questioned, and this appellant admits that the plaintiffs, excepting Nicholas, Annie, and Ellen, are entitled to have adjudged to them a one-ninth undivided interest as to all the lands in the joint possession of this appellant, E. J. Gurley, O'Brien and wife, and Brady. The only question made upon the master's report also relates to the directions given in the interlocutory decree requiring that lands not in the possession of this appellant and not in the possession of the complainants or by Brady and O'Brien and wife or E. J. Gurley be set off to this appellant as a part of his share of the common estate.

The record is lengthy. A large part of it relates to lands not in dispute here, upon which testimony was taken and upon which the court neither in its interlocutory decree nor in its final decree pronounced any judgment. There was in fact no finding by the court as to the legal title or other alleged equity of complainants. (Rec., pp. 295–298.)

The attention of the Court is respectfully directed to the second error assigned, which is as follows:

"2. The court erred in holding that Nicholas, Annie, and Ellen Hanrick were entitled to recover, it appearing from their pleadings that before the institution of this suit they had severally conveyed all their interests."

STATEMENT UNDER THE ABOVE-ASSIGNED ERROR.

In the original petition, filed in the State court December 17, 1878, the plaintiffs distinctly claimed as heirs of the deceased intestate, Edward Hanrick. No mention is made of the fact that before the institution of the suit the said complainants or any of them had passed their title by deed.

See Record, pp. 1–4.

This fact first appears by the allegation of the plaintiffs in amended petition, filed March 8, 1882, beginning on page 10 of the Record, in words as follows:

"And the said plaintiffs, Annie, Ellen, and Nicholas Hanrick, complaining specially of the said defendant, Eliza M. O'Brien, and her husband, Philip, and the said William Brady, would respectfully represent unto your honor that heretofore, to wit, on the 21st day of August, 1877, the said Nicholas Hanrick, and on the 3rd day of April, 1878, the said Annie, otherwise Honora, Hanrick were severally seized as aforesaid of their said undivided interest in said land described in Exhibit A, which they inherited from and under the said Edward Hanrick, deceased, and were also seized of a similar undivided interest inherited in the same manner in the following-named tracts of land, to wit" (and then describing lands belonging to the estate of Edward Hanrick, deceased), situated in Texas, and in which the said Annie, Ellen, and Nicholas Hanrick, by virtue of facts hereinbefore shown, were each seized of the same undivided interest inherited by them in the lands described in said Exhibit A, to wit, each being seized of an undivided one-eighteenth interest; that on said days last aforesaid the said Eliza M. O'Brien, through her husband and agent, the said Philip O'Brien, induced the said Annie, Ellen, and Nicholas Hanrick, the latter being joined by his wife, Kate, to convey to her, the said Eliza M. O'Brien, for the trust purposes hereinafter stated, all their right, title, and interest in and to the lands described in said Exhibit A * * * by certain deeds of conveyance, copies of which in substance are hereto attached and marked respectively K, S, M, and made a part of this petition; which said original instruments the said O'Brien and wife and the said William Brady are hereby notified to produce on the trial of this cause or secondary evidence of the same will then be offered."

Exhibit N referred to is deed of Ellen Hanrick, spinster, daughter of James Hanrick, deceased, as grantor, to Eliza Mercy O'Brien, grantee. In consideration of one dollar paid the grantor does hereby give, grant, bargain, sell, and convey unto the said Eliza Mercy O'Brien, in her own right, all my right, title, and interest in and to the following-described lands, situated in Texas. Then follows the description of the lands belonging to the estate of Edward Hanrick, deceased, which includes the lands in controversy. The deed closes with covenants of lawful seizin, right to convey, and general warranty, and is dated the 3d day of April, 1878.

Exhibit Q referred to is a deed of the same date of the former, and made by Honora Hanrick, spinster, daughter

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NOTE.—It may be here stated that Exhibit M referred to is the deed of Nicholas Hanrick, son of James Hanrick, joined by his wife, Kate, as grantor to Eliza Mercy O'Brien, wife of Philip O'Brien, as grantees. Witnesseth that the said parties of the first part, in consideration of the sum of one dollar, lawful money, in hand paid to them by the said party of the second part, hath granted, bargained, sold, and conveyed, and by these presents do grant, &c., unto the said party of the second part and to her heirs and assigns forever all the right, title, and interest of the party of the first part of, in, and to each and all of the following tracts of land, which belonged to Edward Hanrick, of Montgomery, State of Alabama, deceased, 1865, A. D., in which he had or claimed to have a right, title, or interest, all situated and lying and being in the State of Texas, in the United States of America, namely, (and then describes the lands in controversy). The deed closes by covenants of seizen, good right to convey, and general warranties properly acknowledged for record.

of James Hanrick, of Tomamic, county of Wexford, Ireland, to the same grantee, Eliza Mercy O'Brien, for the consideration of one dollar, conveys the same lands and with the same covenants of seizin, right to convey, and general warranty. These deeds are found in the record, beginning on page 14-19.

The allegation of the petition then proceeds: That, though each of said conveyances purports to be in consideration of one dollar paid to each of the said grantors, in truth and in fact no consideration passed between said grantors and said grantees, nor was any consideration or thing of any value whatsoever given or promised said grantees in payment of the said conveyances, but the said Eliza O'Brien, through her husband and agent, the said Philip, represented to said grantors that their interests in the said lands hereinbefore described could not be recovered, and that their claim in and to the same could not be successfully asserted against the said Edward G. Hanrick and others claiming the same unless they first transferred their interest therein to a native-born citizen of the United States; that, since they were foreign-born, they could not, under the laws of Texas, maintain suits in the courts of Texas for the recovery of their said interest in said lands, and that it would, therefore, be advisable for them to transfer their interest by apparently absolute deeds to a native-born citizen of the United States, so that suits could be brought for their benefit in the name of such citizen; that the said Nicholas, Annie, and Ellen Hanrick, believing said representations to be true, were induced by the same to and accordingly did execute and deliver said conveyances for the sole and only purpose of enabling said suit to be brought in the name of a native-born citizen, which they would not have done but for said representations, and the said Eliza M. O'Brien, joined by her husband, the said Philip, did, at the time of the execution of the said deed, expressly promise the said Nicholas, Annie, and Ellen Hanrick that she would reconvey to them their said interest thus conveyed to her whenever requested so to do or as soon as their rights in and to said lands should be established without charge or expense to them, and the said Eliza M. O'Brien and her husband did also expressly promise, immediately on the execution of the said conveyances, to institute a vigorous prosecution for the recovery of their said rights, they then and there representing to the said Annie, Ellen, and Nicholas Hanrick that they had ample means for the prosecution of said interest, and that, relying on said promises, they executed said instrument, which they would not have done but for the same; that after the execution of said deed the said Annie, Ellen, and Nicholas ascertained that said conveyances were entirely unnecessary, and that the said Philip and Eliza M. O'Brien had intentionally or through ignorance deceived them by said representations; that suits could not be instituted and successfully prosecuted in their names; that after ascertaining the said facts the said Annie, Ellen, and Nicholas requested the said Eliza M. O'Brien and the said Philip O'Brien to reconvey to them the legal title in and to their said interests in said land which they had as aforesaid conveyed to the said Eliza; that they did, on the — day of ——, A. D. 1878, execute and deliver to S. Zuckerman, of Wood county, Texas, certain bond, wherein they agreed upon compliance with certain conditions therein named to convey to him one-half of their said interest, and that immediately thereafter they informed the said O'Briens of the execution of the same and requested them to reconvey to them the said property, which the said O'Briens wholly refused to do. Then follows an allegation of an agreement in writing, signed by Philip O'Brien, acknowledging that he held said land in trust for the purposes above stated. The plaintiffs further allege that on the — day of November, 1878, the said Eliza M. O'Brien, joined by her husband, Philip, after having been requested as aforesaid to reconvey to said Annie, Ellen, and Nicholas their legal title in and to their interest in said land and after being informed of their representation of said covenants by the execution of said bond in favor of the said Zuckerman, did, nevertheless, convey to the said Brady an undivided one-half of the interest conveyed to them by the said Ellen and Annie, said conveyances, however, being without consideration and with full knowledge on the part of said Brady that said conveyances to the said Eliza M. O'Brien were for trust purposes and without good or valuable consideration, and that the equitable title in and to their said interest was and ever had been in the said Annie and Ellen; and the said Annie, Ellen, and Nicholas further allege that neither the said Eliza M. O'Brien nor her said husband took any steps for the purpose of bringing suit for them in the name of said Eliza M. O'Brien for the recovery of their said interest; nor have they in any manner attempted to carry out said trust. Wherefore the said Nicholas, Annie, and Ellen say that the said Eliza M. O'Brien has shown herself and her said husband to be entirely unsuitable and unfit for the execution of the trust intended, as well as the fact that said trust was executed originally by mistake, and that the interests of the complainants are seriously jeopardized by the said conveyances, and that the same were and are still entirely unnecessary. The premises considered, the said Annie, Ellen, and Nicholas Hanrick pray that the said Eliza M. O'Brien and Philip O'Brien and William Brady be cited, and on final hearing the said court render a judgment canceling said deeds. (Record, pp. 12, 13.)

In this connection we respectfully call the attention of the Court to the deed of Eliza (Elizabeth) O'Brien, of Ireland, as grantor to Eliza Mercy O'Brien, wife of Philip O'Brien, as grantee. Said deed is dated May 11, 1878, and recites that in consideration of the sum of one dollar the grantor by these presents has granted, bargained, sold, conveyed, &c., to Eliza Mercy O'Brien all the right, title, and interest of the party of the first part to each and all of the following tracts of land which belonged to Edward Hanrick, of Montgomery, State of Alabama, now deceased, or in which he had or claimed to have a right, title, or interest, all situated and being in the State of Texas. Then follows a description of the lands belonging to said estate, including the lands in controversy here; said deed closes by covenants of seizin, right to convey, and general warranty. (Record, pp. 272–274.)

Also to the deed of Eliza M. O'Brien, wife of Philip O'Brien, joined by the said Philip, as grantors, to William Brady, as grantee. It recites that in consideration of the sum of ten dollars the grantors have granted, bargained, sold, and conveyed to said Brady "all the undivided one-half interest of any equity of title they may have or acquire of, in, and to the following-described tracts, pieces, or parcels of land situated and lying and being in the State of Texas."

Then follows the description of the land belonging to said estate, including the lands in controversy, and also an undivided one-half interest of any interest which the parties of the first part have or may acquire in and to any other land in the State of Texas, and being the same premises which were conveyed to the said Eliza M. O'Brien, one of the parties of the first part, by three certain deeds, one thereof being dated the 3d day of April, one thousand eight hundred and seventy-eight, made and executed by Honore Hanrick, spinster, of Brooklyn, Kings county, State of New York, daughter of James Hanrick, of Tommanine, county of Wexford, Ireland, deceased; another thereof being dated the 3d day of April, 1878, executed to Ellen Hanrick, spinster, of the said county and State of New York, daughter of James Hanrick, of Taminie, county of Wexford, Ireland, deceased; another thereof bearing date 11th day of May, one thousand eight hundred and seventy-eight, and executed by Eliza O'Brien, of Tomfarney, in the county of Wexford, Ireland, widow, said residue, interest, or title hereby intended to be conveyed being one-half of such as has or may accrue to said parties of the first part under the foregoing-recited deeds of conveyance thereof, together with all and singly, &c.

Then follow covenants of lawful seizin, right to convey, and general warranty. (Record, 274.)

Undoubtedly these deeds did convey to O'Brien and wife and to Brady the legal title of the complainants Nicholas, Annie, and Ellen Hanrick in and to the lands involved in this suit. Now, as to the causes assigned why said deed should not have effect, we call attention, first, to the fact that in the original petition (Record, p. 1), besides the complainants here, Elizabeth O'Brien was made an original party complainant, and on page 4 it is alleged with respect to her as follows:

> "Petitioners further aver and charge that the defendant Philip O'Brien and his wife, Elizabeth O'Brien, fraudulently pretend to have an interest in and to the above-described parcels of lands, for which reasons they are herewith made parties to this suit; that they have not now and never had any interest in and to said parcels of land."
>
> Record, page 4.

It appears on Record, page 6, at bottom, that after a judgment was entered on the demurrer to said original petition for some reason the judgment was set aside and judgment was entered that plaintiffs "discontinue as to defendants Philip O'Brien and Elizabeth O'Brien," and it further appears that on page 7 of the Record, in the opening part of plaintiffs' third amended original petition, filed March 8, 1882, that the complainants here dismissed as to their complainant, the said Eliza O'Brien, of Wexford county, Ireland, who it is recited was improperly joined with them in their former petitions.

Why it was that after joining Elizabeth O'Brien, of Ireland, as plaintiff and joining Eliza M. O'Brien and her husband, Philip, as defendants in their original petitions filed in 1878 and afterwards dismissing those parties from the case they again asserted the right of Eliza M. O'Brien and her husband, Philip, as set out in their petition filed March, 1882, may be explained, probably, by reference to the testimony of H. F. Ring, taken before J. F. Knox, special commissioner. His testimony is found beginning on page 216. The part to which attention is called begins on page 219, as follows:

> "On the 18th day of February, 1879, Annie, Ellen, and Nicholas Hanrick, of New York, executed a power of attorney authorizing W. C. Belcher, then of Wood county, Texas, and myself jointly with J. C. Clark, of Brooklyn, N. Y.,

to sell and convey the interest of said grantors in the lands pertaining to the estate of Edward Hanrick, deceased. This power of attorney also contains a conveyance to Belcher and myself of one-half of the undivided interest inherited by the said Annie, Ellen, and Nicholas Hanrick in said land, subject to such claim upon the same as one S. Zuckerman might have under his contract with them. October, 1878, myself and J. T. Brady brought the suit of trespass to try title in the circuit court of the United States at Waco, Texas, in which the writ of possession referred to in these depositions was issued. We were not partners in the practice of law at that time. That suit was instituted in the spring of the year 1880. Although at this time there had been no adjustment or agreement on the part of William Brady and Philip O'Brien and wife to relinquish their claim upon the interest of the said Annie, Ellen, and Nicholas Hanrick, I did not regard their interest as antagonistic. I did not think their claim amounted to anything whatever, and did not think that it would ever be insisted upon. This was also the opinion of John T. Brady. It is my opinion that William Brady for some time seemed to think that he had some sort of right under those deeds. I don't recollect of hearing him concede that he had none. I am satisfied he was advised by John T. Brady that he had none, and afterwards John T. Brady, as his attorney, filed a disclaimer for him. Before said suit was filed at Waco we had dismissed as to Philip O'Brien and wife and William Brady for want of service on them. After the reversal of the case on the first appeal to the supreme court of the suit they were again made parties. Immediately after the ruling of the district court of Falls county on the demurrer I met John T. Brady and William Brady for the first time. We talked the matter over—his claim and those I represented. The result was that I agreed to make no further contest over his conveyances from Elizabeth O'Brien, of Ireland, to Eliza M. O'Brien, wife of Philip O'Brien, and he paid me five hundred dollars as a contribution on his part for the work and expense in settling the alienage question in the supreme court of Texas. He made no further contribution until after the case was briefed and argued in the supreme court. At that time I requested William Brady to relinquish his claim as to the interest of Ellen, Annie, and Nicholas Hanrick, which he declined to do. He seemed to think he had some rights against their interests."

ARGUMENT.

It seems hardly necessary to urge the proposition that only those who have an interest in land can sue for a partition. In this case the deeds above indicated do certainly show that at the time this suit was brought and continuously until its trial in the circuit court the title of Nicholas, Annie, and Ellen Hanrick rested in Eliza M. O'Brien and her husband and William Brady. Of this there can be no question. Indeed, it is not disputed. It is sought, however, to avoid the effect of those deeds in two ways: First, by a disclaimer filed in the said court without date, found on page 19 of the Record. Said paper simply disclaims any interest in so much of the land sued for by the plaintiffs as appears to have been conveyed to them in any manner by authority of the three certain deeds described in plaintiffs' petition as having been executed by Annie Hanrick, Ellen Hanrick, and Nicholas Hanrick; and, second, by the admission of Brady and O'Brien in their answer to complainants' bill filed in the circuit court; said answer found on page 139. In paragraph first they say that they "admit the truth of all allegations and averments in said bill contained except as to those contained in a certain paragraph therein, No. 15, it being unnecessary for these defendants either to admit or deny the charge of fraud therein made."

The statement made by complainants, Nicholas, Annie, and Ellen Hanrick, in their petition filed in the suit in said State court is substantially reiterated in the bill filed by complainants in the circuit court on page 74. It appears from the allegations of the bill that the complainants, Nicholas, Annie, and Ellen Hanrick, transferred their title to Eliza M. O'Brien, wife of Philip O'Brien, for the purpose of enabling her to bring suit in her own name to recover the interest of said complainants, and I think it is fairly inferable that the deed made by Elizabeth O'Brien, of Ireland, was made to the same grantee for the same consideration and for the same purpose. There was then placed in the name of Eliza M. O'Brien the interest of Elizabeth O'Brien and the interest of Nicholas, Annie, and Ellen Hanrick, for the purpose of enabling her to institute suit to recover those interests, which, according to the litigation, she and her husband, Philip, promised to do. There seemed to have been a great stir about this time between the lawyers who were looking out for the alien's rights. Branch and John Sargent appeared first to have dealt with the parties and to have received from Philip O'Brien a deed made by authority of a power of attorney to him from his mother and his two uncles, John and James, dated as far back as 1870. At the time he executed the deed to Sargent and Branch John and James were dead, but the other constituent of power, Elizabeth O'Brien, was still living. About this time it appeared further that Elizabeth O'Brien, of Ireland, conveyed her interest to her son's wife, Eliza M. O'Brien, and that shortly afterward Eliza M. O'Brien and her husband received, also, the deeds of Nicholas, Annie, and Ellen Hanrick, and thereupon conveyed to Brady. It seems, however, about the same time that Nicholas, Annie, and Ellen Hanrick made a contract with H. F. Ring and W. C. Belcher, by which they were to receive a one-half interest in the estate (subject to such rights as S. Zuckerman might have) as compensation for their services in recovering the land.

The question seems to have been, who, among these lawyers, should bring the suits and realize the fee from them. Messrs. Belcher and Ring were first in the field and filed a suit in December, 1878, in which they claimed not only to represent the heirs of James Hanrick, but also to represent Elizabeth O'Brien, of Ireland, and they alleged O'Brien was fraudulently claiming some interest in the lands. It appears from the testimony of Mr. Ring on page 219 of the Record that he joined Brady as counsel to bring this suit in the circuit court. He says he did not regard the interest of his clients, Nicholas, Annie, and Ellen, as antagonistic to the interests of William Brady, but he does state that William Brady paid him five hundred dollars in consideration that he would cease to claim a right to represent Elizabeth O'Brien, and he further states that upon being requested to release his interest in the shares of Nicholas, Annie, and Ellen, Brady refused to do so. It therefore appears that Mr. Ring represented both Brady and O'Brien and wife, and also the interest of the James Hanrick heirs, and, being counsel for both of them in his discretion, he seemed to claim the right to put the title where it best suited his interest. If the title of Nicholas, Annie, and Ellen Hanrick remained with Brady and O'Brien, then Ring had no interest in it save such as they might concede him. If he should be able to maintain his control of those interests, then he had a contract which entitled him to receive one-half of what should be recovered. Now, we respectfully submit to the Court that in this we find the true reason why it was that Nicholas, Annie, and Ellen, or rather their attorney, desired to cancel their deeds. There was nothing in their minds causing such action, but was doubtless in the mind of the attorney in order to secure his own contingent interest.

In view of the allegations in the petition and in view of the other facts which have been mentioned, we submit to the Court that neither are the facts alleged sufficient nor is there any proof of said facts outside of the admission of parties, which could have effect only at the date of the trial in the circuit court, to authorize the cancellation of said deeds.

The third assignment of error is as follows:

"The court erred in not holding that Nicholas Hanrick was barred of his right of recovery by reason of the fact that in a suit brought by him against a tenant of this defendant, and in which this defendant became a party, said suit being in the district court of Falls county, judgment was entered against said Nicholas Hanrick denying his right, which judgment is final and conclusive against said Nicholas Hanrick."

STATEMENT.

The record of said court will be found beginning on page 249–253.

In the petition Nicholas Hanrick complains of J. B. Ubank by petition filed in the district court of Falls county, spring-time, 1880. The plaintiff sets up his relationship to the deceased Edward Hanrick and gives a full pedigree of the family, and then alleges that Edward Hanrick died seized of a tract of land known as the Pedro Zarza five-league grant, situated in Falls county. The plaintiff in said suit alleged his interest to be an undivided one-half interest in said tract of land. He alleged that the defendant Ubank had entered upon said premises and ejected plaintiffs and took possession of a tract containing one hundred acres, part of the Zarza grant, and prays for judgment.

The defendant Ubank answered that he holds and owns a tract of one hundred acres which he occupied and under the title derived from E. G. Hanrick by deed and covenants of general warranty, and he prays that E. G. Hanrick be required to appear and defend. (Record, p. 252.) Thereupon E. G. Hanrick appeared and filed a demurrer and answer to said petition, pages 352–'3, and thereupon the court made an order following:

NICHOLAS HANRICK }
vs. } No. 1783.
J. B. UBANK. }

This cause coming on to be heard, and the parties, plaintiff and defendant, having announced themselves ready for trial, thereupon came on to be heard the said defendant's demurrer and exceptions to said plaintiff's petition, and the court being of the opinion that said petition is insufficient and shows no right in the plaintiff, because said petition shows that a portion of said plaintiffs are now and were at the death of Edward Hanrick, the intestate from whom the plaintiff claims title, aliens, and the others of said plaintiffs claim title from said deceased from a living ancestor who was an alien, it is therefore considered by the court that said demurrer and exceptions be sustained, and that, said plaintiff declining to amend, it is ordered and adjudged that said suit be dismissed, and that the defendant go hence without day, and that he have and recover of and from the plaintiffs all costs of suit in this behalf; for which execution may issue.

The fourth assignment of error is as follows:

> "4. The court erred in holding that Annie and Ellen Hanrick were not barred of their right to recover by reason of the fact that their title was put in issue in the suit brought by O'Brien and wife and Brady in the circuit court at Waco against this defendant, and in which suit John B. Sargent and Wharton Branch were also parties claiming by their pleadings and proof the said title of Nicholas, Annie, and Ellen Hanrick, as well as the title of Elizabeth O'Brien, and in which suit the plaintiff recovered the interest of Elizabeth O'Brien only, which judgment is final and conclusive on the title of said Nicholas, Annie, and Ellen Hanrick."

STATEMENT.

Copy of the record of said suit is found in this Record, bottom page 253–287.

It is hardly necessary to recite the pleadings contained in the case, but it appears that Eliza M. O'Brien and her husband, together with William Brady, were plaintiffs against E. G. Hanrick, defendant, and John D. Sargent, of Boston, and Wharton Branch, of Texas, became defendants by intervention under the statute of Texas allowing such mode of procedure.

It appears by a bill of exceptions allowed in said suit (page 278 of the Record) that Eliza Mercy O'Brien, wife of Philip, in consideration of one dollar and other valuable considerations paid by said John D. Sargent, of Boston, does hereby give, grant, bargain, sell, and convey unto said John B. Sargent the following-described, lands, situated in the State of Texas, the said lands being the same this day conveyed to me by William Jenkins, Jr., to wit, (and then describing the lands belonging to the estate of Edward Hanrick, deceased, which includes the lands here in controversy). This deed is dated February 1, 1878. The deed to Jenkins referred to is dated on the 1st day of February, 1878, and is signed James Hanrick, John Hanrick, Elizabeth O'Brien, by Philip O'Brien, attorney-in-fact.

It was admitted that this interest conveyed to Jenkins was on the same day conveyed to Eliza M. O'Brien, wife of Philip O'Brien (pages 277 and 278). There is also a deed dated the 14th of February, 1878, to John B. Sargent, conveying the undivided half interest in the same lands, and signed Philip O'Brien, for himself, Eliza M. O'Brien, James Hanrick, John Hanrick, Elizabeth O'Brien, by Philip O'Brien, their attorney-in-fact. A similar deed by the same grantors was made to Wharton Branch on the same day. It was admitted that at the date of these deeds John Hanrick and James Hanrick were dead. Wharton Branch, in his pleadings on page 271, in setting out the source of his title, alleges that Elizabeth O'Brien, James and John Hanrick, did on the 16th day of May, 1870, make, execute, and deliver to one Philip O'Brien their certain power of attorney to Philip O'Brien, among other things, authorizing him to sell and convey their interests in said estate, and did couple said power of attorney with an interest in said estate mentioned in said power and made the same thereby irrevocable. He further alleges that on the 14th day of February, 1878, Philip O'Brien, in consideration of money paid out and expenses incurred and legal advice and information previously then and there furnished and rendered by defendant, he agreed to pay this defendant the sum of one thousand dollars, the reasonable value, and did, acting for himself and his said wife, Eliza M. O'Brien, and his principals, Elizabeth, James, and John Hanrick, sell and convey to this defendant one undivided fourth of the said three-fourths of said estate, and that the same was so conveyed to this defendant by deed duly executed and delivered, with full covenant of warranty in good faith. Defendant also avers that at the time of making and delivering of said deed to him on February 14, 1878, said O'Brien agreed and undertook to cure any and all defects in said power of attorney to him and the title thereunder conveyed to defendant Branch, if any defects existed, which is denied, and in pursuance of such agreement obtained conveyances from all the parties in interest to be made, the said Philip taking such conveyances by way of purchase and taking the same in the name of his wife, and the title so conveyed inured directly to the benefit of this defendant. The defendant Sargent made substantially the same allegation. There was also before the jury as evidence a deed by Nicholas Hanrick and wife to Eliza M. O'Brien, wife of Philip O'Brien, dated August 21, 1877 (see bottom page 281 of the Record); also deed by Ellen Hanrick to Eliza M. O'Brien, dated April 3, 1878; also deed by Honore Hanrick to Eliza M. O'Brien, dated April 3, 1878—same in form and substance as the former deed, page 284. These deeds are elsewhere set out in a former statement.

The jury returned a verdict in these words:

"We, the jury, find for plaintiffs.

C. Rowan, *Foreman.*"

Top page 286.

The judgment proceeds thus after reciting the presence of the parties:

"It is therefore ordered and adjudged by the court that the plaintiffs Eliza M. O'Brien and Philip O'Brien and William Brady have and recover of the defendant E. G. Hanrick and of intervenors, Wharton Branch and John D. Sargent, the following lands and tracts of lands, being situated in Falls county, Texas."

Then proceeds the description of same lands in controversy here.

"And it is further ordered that a writ of possession in favor of said plaintiffs issue therefor, and that plaintiffs have and recover of such intervenors and of the defendants all costs which were incurred herein," &c.

The verdict and judgment may appear to be a little ambiguous, but it certainly appears that not only the title of this appellant, E. G. Hanrick, was in issue, but it also appears that the title of Sargent and Branch was put in issue by the plaintiffs Brady and O'Brien and wife. The deeds show that the title of Elizabeth O'Brien, of Ireland, was, before the institution of the suit, vested in Brady and O'Brien and wife. The deeds also show that February 14, 1878, O'Brien had attempted to convey by covenants of warranty a three-fourth interest in these lands. It appears, too, that prior thereto, to wit, on the 21st day of August, 1877, Nicholas Hanrick had conveyed all of his interest to Eliza M. O'Brien, wife of Philip O'Brien, and that afterward, to wit, on the 3d of April, 1878, both Ellen Hanrick and Honore Hanrick also conveyed to Eliza M. O'Brien, and it was alleged by said intervenors that O'Brien, at the time of making this deed to them on the 14th of February, agreed and undertook to cure any and all defects in the title conveyed to him, if any existed, and in pursuance of such agreement obtained conveyances from all the parties in interest to be made, the said Philip taking the conveyances by way of purchase, which conveyances, the intervenor alleged, resulted directly to their benefit.

It then appears that in that suit pending in the circuit court of Waco the right and title of not only William Brady, Philip O'Brien and wife, but also the right and title of Nicholas, Annie, and Ellen Hanrick was actually put in issue by the said intervenor and could have been put in issue by the plaintiffs Brady and O'Brien and wife. Indeed, in the very deed under which Brady claimed, O'Brien and wife, as grantors, conveyed to him all the undivided half interest of any equity of title they may have or acquire of, in, and to the following-described tracts, &c., describing them, and also an undivided half interest of any interest which the party of the first part have or may acquire in and to any other lands in the State of Texas, "*and being the same premises which were conveyed to the said Eliza M. O'Brien, one of the parties of the first part, by three certain deeds, one thereof being dated the 3d day of April, one thousand eight hundred and seventy-eight, made and executed by Honore Hanrick, spinster, of Brooklyn, State of New York, daughter of James Hanrick, of Tomfamey, county of Wexford, Ireland, deceased; another thereof, being dated the 3d day of April,* 1878, *executed by Ellen Hanrick, spinster, &c.; another thereof, bearing date* 11*th day of May, one thousand eight hundred and seventy-eight, and executed by Eliza M. O'Brien, of Tomfamey, Ireland.* Said recital of title hereby intended to be conveyed being one-half of such as has been or may accrue to said parties of the first part under the foregoing conveyance," &c. (See page 273 of the Record.)

In this connection, calling attention to the fact that Mr. Ring testifies, as heretofore stated, that he united with Brady in bringing this suit in the circuit court, being at the same time counsel for Nicholas, Annie, and Ellen Hanrick in another suit pending in Falls county, and knowing of the obligation on the part of O'Brien and Brady to litigate the rights of Nicholas, Annie, and Ellen, he caused Brady and

O'Brien and wife to neglect to do so. But it is submitted that the facts show that Brady and O'Brien and wife had the title of Nicholas, Annie, and Ellen Hanrick, and could have litigated the same in that suit.

And it further appears that the title of Nicholas, Annie, and Ellen Hanrick, such as was vested in Branch and Sargent, was before the court for adjudication, and it is respectfully submitted that these facts do constitute a bar so that in this suit the interest of Nicholas, Annie, and Ellen cannot be again litigated.

RES ADJUDICATA.

When several cotenants convey their interest in lands held by them in common to one of their number to enable the grantee to recover the land from a cotenant in possession who claims the entire land in severalty, and after execution of the conveyance to him such grantee in his own name brings an action of ejectment or trespass to try title against the adverse claimant, and in such action recovers an undivided interest in such lands, both the plaintiff in such action and his cotenants, who conveyed their interest to him to enable him to bring the suit, are estopped in a subsequent action for partition from setting up any greater interest in the land than that recovered in such judgment, unless subsequently acquired.

It is the duty of the trustee to defend and protect the title to the trust estate, and, as the legal title is in him, he alone can sue and be sued in a court of law; the *cestui que trust.*, the absolute owner of the estate in equity, is regarded in law as a stranger. The rule is carried to the extent that the grantee of the trustee can alone maintain an action upon the legal title, although the conveyance to him was a breach of the trust.

AUTHORITIES.

Perry on Trusts, sec. 328, 520; Soc. *vs.* Hazen, 100 Mass., 322; Cox *vs.* Walker, 26 Me., 504; Hooper *vs.* Scheimer, 23 How., 235; Fitzpatrick *vs.* Fitzgerald, 13 Gray, 400; Moody *vs.* Farr, 33 Miss., 192; Western R. R. Co. *vs.* Nolan, 48 N. Y., 517; Ryan *vs.* Bibb, 46 Ala., 323; Kirkland *vs.* Cox, 94 Ill., 402.

In the case of Boardman *vs.* Beckwith, 18 Iowa, 292, the court says:

> "The only proper plaintiff in an action for the recovery of real estate is the party holding the legal title, although only the trustee of an express trust."

A trustee may recover in ejectment the lands affected by the trust, even against his *cestui que trust.* (Beach *vs.* Beach, 14 Vt., 28) and may defend the legal title against the *cestui que trust.*, unless the trust has terminated or the trustee is enjoined by a court of equity from setting up the title. The title of the *cestui que trust.* being merely equitable, and the trustee being vested with the legal title or estate, real actions or remedies in the nature of ejectments must, of course, be brought in the name of the trustee. (Sedgwick and Wait on Trial of Title to Land, sec. 222.)

> "It is not always necessary that the parties to the two suits should be nominally the same in order that one recovery may bar another; it is generally sufficient if they are really and substantially in interest the same. So, to render a decree conclusive upon a person, it need not be against him particularly by name; it is enough if it is adverse to his interest. For instance, the lessor of the plaintiff is the real party in the common-law action of ejectment and the nominal plaintiff has no interest, and consequently, in an action brought by Doe on demise of J. S. against B. J. S., is bound by a judgment for the defendant." (Black on Judgments, sec. 537.)

By article 4811 Sayles' Texas Civil Statutes it is provided:

> "Any final judgment rendered in any action for the recovery of real estate hereafter commenced shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered and upon all persons claiming from, through, or under such party by title arising after the commencement of such action."

In the case of Hawley *vs.* Simons, 102 Ill., 115, the court says:

> "A judgment at law, whether in an ejectment suit or in some other form of action, is conclusive on the parties upon all questions, titles, and rights involved in the litigation and passed upon by the court, which the court had power and jurisdiction to hear and determine and nothing more, and whenever the same questions or the same rights or titles are again drawn in issue, whether in a court of equity or court of law, between the same parties or their privies, the previous adjudication must be regarded as conclusive upon them, and they will not be permitted to open up the controversy again." (Black on Judgment, sec. 655.)

Prior to the action of ejectment set up in defendant E. G. Hanrick's answer and cross-bill he held the land in controversy adversely to plaintiff and his codefendants in this suit; he claimed to own the land in severalty; the question of title could not be adjudicated in an action for partition, hence it was necessary that the cotenants out of possession should establish their title as against defendant E. G. Hanrick by the statutory action of trespass to try title before they could maintain their suit for partition. This they did, and, to facilitate the suit or for other reasons sufficient to them, all their interests in the land were conveyed to Eliza M. O'Brien to enable her to bring suit for her own benefit and theirs to recover from E. G. Hanrick their interest in the land in controversy. (Nichols *vs.* Dabrell, 61 Tex., 539.)

In Clapp *vs.* Bromagham, 9 Cow., 304, the court says:

"In partition the plaintiff or petitioner must allege that he is seized, which imports a present possession as tenant in common or coparcener, and hence it is that *non tenent insimul* is the appropriate issue in partition, because the parties cannot hold together unless their possessions as well as their title are in common. The fact of the adverse holding by one against the other shows that they cannot hold together and *pro indiviso*, for the party in possession holds the whole in exclusion of the others. A mere right of entry if shown will not satisfy the terms of the issue, for there is no seizin in the party who is ousted."

The object of the proceeding in a petition for partition is to turn an estate that is possessed in common into an estate in severalty, and not to furnish a mode of settling conflicting titles. It is the general rule that a petition for partition cannot be sustained on a mere right of entry. (Brock vs. Eastman, 28 Vt., 660; 67 Am. Dec., 733.)

5. The court erred in taking cognizance of this suit as a partition suit, it appearing by the pleadings and by the evidence that the title of the complainants was seriously disputed and no partition could be had until the title and right of possession should be adjudicated in a proper proceeding.

In complainants' bill (p. 86 of the Record) it is alleged "that said E. G. Hanrick had at divers times prior to the institution of this suit * * * selected certain specific portions of said tracts of land described in Exhibit A and has sold and conveyed the same to the persons named in Exhibits K and L, hereto attached and made part of this bill, as well as to many other persons whose names are to complainants unknown." * * * That complainants have acquiesced in the selection, use, and disposition of said tracts of land by said E. G. Hanrick and have consented to the same and to the partial partition therefrom resulting and have refrained from disturbing the possession of the parties who have as aforesaid purchased or contracted to purchase of the said E. G. Hanrick said tracts of land by suit or otherwise. Petitioners have refrained from making them parties to this suit at the time of the institution of the same. Complainants thus having then and at all times elected to acquiesce in the selection and appropriation of said tracts by defendant E. G. Hanrick and a partial partition of said estates therefrom resulting, and being thus purchased by said defendants, E. G. Hanrick and E. J. Gurley. That by the terms of said conveyances last referred to the said E. G. Hanrick, in some instances being joined by said E. J. Gurley, attempted in each and every instance to convey to said parties named in said Exhibits K and L and to many other persons not named therein the whole and entire title of which Edward Hanrick died seized in and to the tracts of land so conveyed, using in the deeds of conveyance to such purchasers and in contracts to convey words purporting to convey or to agree to convey such entire and undivided interest, and describing lands therein conveyed by metes and bounds; that at the time of making said conveyances he represented to the world at large and to the grantees named in the Exhibits K and L and to all to whom he made such sales in particular that he was the sole heir of the said Edward Hanrick, deceased, and that he would convey and did and so conveyed to said grantees all the right, title, and interest of which said Edward Hanrick died seized in and to said tracts of lands; that said grantees, believing the said representations and relying on the same, without notice to purchasers, by means thereof, did purchase said tracts of land in good faith with the understanding and belief that they were acquired by said purchase, the entire title of which the said Edward Hanrick died seized in and to the same; that the aggregate value of the tracts of land described in the Exhibits K and L and of those sold and granted to said sundry persons referred to above and those selected and granted by the said E. G. Hanrick and E. J. Gurley is reasonably worth, exclusive of the value of improvements placed thereon since —— and the tract to be sold, the sum of, to wit, $200,000; that when said sales and contracts of sales were made the lands thus sold and contracted for were wild and unimproved lands, and that the price paid and agreed to be paid for said lands was in every instance a reasonable value of the same; that said lands are now in possession of the parties holding the same under title or contract of title from the said E. G. Hanrick and E. J. Gurley adversely to complainants, and the same largely exceed in value, quantity and quality considered, one-third of

Article No. 3465, Sayles' Texas Civil Statutes, provided as follows:

"Any joint owner or claimant of any real estate or any interest therein may compel partition thereof between the other owners or claimants thereof in the manner provided in the succeeding articles in this chapter."

Article No. 3466:

"Such joint owner or claimant may file his petition in the district court or county in which the real estate sought to be partitioned or a portion thereof is situated, which petition shall state the names and residence, if known, of each of the other joint owners or joint claimants of such real estate; 2, the share or interest which the plaintiff and the other joint owners or claimants of said real estate own or claim, so far as known to the plaintiff; 3, the real estate sought to be partitioned shall be described in such manner as that the same may be distinguished from any other real estate and the estimated value thereof stated."

It is not only the statute of the State, but it is also the rule announced by the supreme court of Texas that the very basis of partition is co-ownership, and without that there can be no partition. (Davis *vs.* Agnew, vol. 2, Texas Reports).

See also Freeman on Cotenants and Partition, second edition, section No. 431.

It is also essential that the party seeking the partition must be in possession of the estate to be partitioned, or at least that his right to such possession is not seriously disputed.

Section 446.

Proceedings for partition were not designed as an alternative remedy for an action of ejectment. It was always necessary at law, and is still essential under most American statutes, that the applicant for partition be actually or constructively in possession of the real property sought to be divided. If it be held adversely to the applicant, he must first establish his right by an action to recover possession.

Section 447.

As to the pleadings in an action for partition, it is necessary to allege that the parties plaintiff and defendants "hold together and undivided," and it should be followed by a description of the property which they so hold and of which partition is demanded.

Section 487.

The rule of equity jurisdiction is well settled that the court will not interfere unless the complainant's title be clear and will never grant relief when the title is denied or suspicious until the party seeking relief first establish his title at law.

Section 502.

When one of several cotenants conveys to a stranger a specific portion of land out of the estate in common in an action for partition of the whole estate by another of the cotenants, the grantee of the specific portion is a necessary party to the suit. (Freeman on Cotenancy and Partition, 465.)

The deed of a tenant in common to a specific portion of the common property is not void, but will be respected so far as it may be consistent with the rights of cotenants. (Freeman on Cotenancy, sec. 204; Cameron *vs.* Thurman, 56 Tex., 22; Arnold *vs.* Cauble, 49 Tex., 533.)

In those States where the conveyance of a cotenant to a specific tract of land out of the common estate is regarded as valid and as investing the grantee with all the rights and interest which his grantor had in the tract conveyed, the right of such grantee to be a party defendant in a suit for partition is as absolute as that of a cotenant of the whole tract. (Cameron *vs.* Thurman, 56 Tex., 22; Arnold *vs.* Cauble, 49 Tex., 533; Gates *vs.* Salmon, 35 Cal., 588; Freeman on Cotenancy and Partition, sec. 465.)

In treating of parties in chancery in the case of Barney *vs.* Baltimore City, 6 Wall., 284, Mr. Justice Miller divides them into three classes: "1st, those who have such a relation to the suit, formal or otherwise, that while they may be called proper parties the Court will take no notice of their omission; 2d, those whose interests are such that the Court will order them to be made parties if within its jurisdiction, but otherwise will administer such relief as it can without them; 3rd, those whose interests in the subject-matter of the suit and the relief sought are so bound up with the other parties that their legal presence as parties to the proceeding is an absolute necessity without which the Court cannot proceed. In such cases the Court refuses to entertain the suit when these parties cannot be subjected to its jurisdiction." He then proceeds to quote and approve the following description of this third class, as given in Shiels *vs.* Barrow, 17 Howard, U. S., 130:

> "They are persons who not only have an interest in the controversy, but an interest of such a nature that final decree cannot be made without affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience."

He next states that this description applied to all cotenants where the suit was for partition, saying:

> "If a decree is made which is intended to bind them it is manifestly unjust to do this when they are not parties to the suit and have no opportunity to be heard; but as the decree cannot bind them the Court cannot, for that very reason, afford the relief asked to the other party. If, for instance, the decree should partition the land and state an account the particular pieces of land allotted to the parties before the Court will still be undivided as to these parties whose interest in each piece would remain as before the

partition, and they could at any time apply to the proper court and ask a repartition of the whole tract, unaffected by the decree in this case, because they can be bound by no decree to which they are not parties."

In Stark *vs.* Barrett, 15 Cal., 370, in speaking of the rights of a grantee of one of several tenants in common to a specific portion of land out of the common estate, Chief Justice Field says:

"But we do not see that any such result necessarily follows, for the partition may be directed without reference to the grantees under the conveyances, further than to make them parties to the proceedings in partition in connection with their grantor, as representing his interest as original cotenant. Their claim to control or affect the partition by reason of their respective conveyances may be entirely disregarded. The grantees are to be considered as taking their conveyances subject to this condition. Their position in that respect is not very dissimilar to that of grantees of premises upon which judgments stand as liens or in relation to which suits are instituted with notice of their pendency filed in the recorder's office. Such grantees would acquire interest, liable indeed to be destroyed by sale under the judgments or the result of legal proceedings, but until such destruction capable of enforcement against intruders and trespassers."

McKay *vs.* Welch, 22 Tex., 390.

In Gates *vs.* Salmon, 35 Cal., 588, the court says:

"The rights thus assigned to the grantee are precisely those pertaining to the grantor in the special tract, no greater and no less. The grantor, before his conveyance of the special tract, held his undivided interest therein subject to the contingency of the loss of it if on partition of the general tract the special tract should be allotted to one of his cotenants. The grantee then acquires all of the interest of his grantor in the special tract, and that interest is a tenancy in the special tract in common with the cotenancy of his grantor, but his conveyance did not sever the special tract, from the general tract so far as the cotenants are concerned, and the general tract is therefore liable to a partition, so far as the cotenants of the grantor are concerned, as it would be had the conveyance of the special tract not been made."

In the case from which this last quotation was taken the precise question before the court was whether the grantees of specified parcels under the original tenants in common were necessary parties to a proceeding for partition.

In the case of Ferris *vs.* Montgomery Land and Improvement Co., 94 Ala., 557; 33 Am. St. Rep., 149, the court says:

> "In a suit for partition it is indispensable that all cotenants not uniting in the bill should be made parties defendant, and therefore, since the United States cannot be made a party without its consent, a plea of one of the defendants which avers that the interest claimed by another defendant belongs to the United States will, if sustained by the proof, render a final partition impossible unless the United States consents to become a party to the cause."

By his deeds to specific parcels of the land in controversy, as set forth in the answer of defendant E. G. Hanrick, he parted with all his title to such specific parcels, and the same passed to his grantees in such conveyances; he no longer owned any portion of such specific parcels of land. In the case of Davis *vs.* Agnew, 67 Tex., 206, Chief Justice Stayton says:

> "A partition of land between one who owns an undivided interest in it and one who has no interest whatever is necessarily no partition, and neither confers upon one nor takes from the other any right, it matters not what may be the form of the instrument by which the intent to partition is evidenced. The very basis for partition is co-ownership, and when this does not exist the instrument which attempts partition is simply void."

See also Channel Co. *vs.* Bruly, 45 Tex. Rep., 6.

REMARKS.

I desire to call to the attention of the Court a practical view of this case. As shown by the master's report, he valued the land on the Zarza grant at one hundred and fifty-three thousand four hundred and nine dollars and twenty-five cents (page 300 of the Record). He has valued the land on the De la Serda grant at $126,090.88, a total of $279,500. Out of this vast estate, which it appears in the record the defendant E. G. Hanrick has been caring for since 1865, there was set apart to him out of the Zarza grant a little tract of 754 and ¾ acres of land. (See page 301; see also the top of page 331, where it is recited in the final decree as follows:)

"And to the defendant E. G. Hanrick it is adjudged and decreed that all of the rest and residue of said block A be allotted and set aside to him, the same embracing lands sold by him in said block before the institution of this suit and the 640-acre tract of land sold by Edward Hanrick, deceased."

Page 306 of the master's report: "I would further report in a partition of the Zarza grant, as contained in my original report, the land set apart to E. G. Hanrick, except the 754 acres in block B set apart to him, were sold by E. G. Hanrick prior to the institution of this suit, and also the compromise lands so set apart to him were charged."

Turning now to the interlocutory decree, page 297 of the record, in paragraph 6 it appears that the Court directed the master in making the partition to set off to the defendant, E. G. Hanrick, as a part of his share the said several tracts of land conveyed by him, which, it appears from the master's report and the final decree, was done, and in doing so left to E. G. Hanrick seven hundred and fifty-four acres of land on the Zarzas grant and ninety-five acres of land on the De la Serda grant, both valued by the master at less than ten thousand dollars.

As to the lands on the De la Serda grant there was set apart to E. G. Hanrick by the decree one tract of 95 acres of land designated on the plat as G. L. Parsons, Jr., survey, 95 acres, and all the rest and residue and remainder of the said De la Serda grant not herein allotted and set forth to E. J. Gurley or to the complainants herein or to the defendants William Brady, Philip O'Brien, and W. A. Patrick, administrator of the estate of William O'Brien, deceased, said residue including 6,841 acres of land on said grant sold by said E. G. Hanrick before the institution of this suit and occupied by persons not parties to this suit, and also the lands conveyed to E. G. Hanrick by —— —— before the institution shall be, and the same is hereby, allotted to the defendant E. G. Hanrick.

It thus appears that out of this vast estate he received one tract of 754 acres and one tract of 95 acres of land.

It appears by the record (see the testimony taken before the commissioner, Knox, beginning on page 198 in the testimony of Gurley, Gameson, Goodrich, and Ring) and by the allegations of the pleadings that at the time that E. G. Hanrick took charge of this property it was all in litigation, unimproved and producing no revenue. It also appears that he has paid taxes on it and improved it and has paid the costs of litigation to a large amount, as reported in the master's report. The lands, being in litigation and in an uncultivated condition, could, of course, only be sold at a very low figure, if at all. Sales were made by him in order to protect the balance of the property. It appears that such sales were made for a low price as compared with the present prices, and the money received from these sales was used in protecting the balance of the property. Now, when the strife with adverse claimants had been settled, the aliens come to the front and in a division they require that these various tracts of land for which Hanrick has made deeds shall be set off as a part of his share.

Referring to the report, it will be seen that these lands were valued to him at the present prices, though sold long before the advent of barbed wire or any other conditions which created a demand for the land and which, in fact, he was compelled to sell for very low figures in order to realize anything at all, and in thus arranging the figures, while it leaves him with a very little scrap, as I have stated, it leaves the aliens, as shown by the master's report, in value $31,868.72 out of the Zarza grant and $31,838.90 out of the grant to William Brady, O'Brien, and wife, and the same amount to the complainants in this case.

If it be equitable that heirs should share equally here is an equality that is indeed shocking. The conclusion arrived at is certainly a strong argument against the methods by which the end was reached.

It is most respectfully prayed that the decree be reversed and such directions given that justice will be done.

L. W. GOODRICH,
Of Counsel for E. G. Hanrick, Appellant.